



Autoritat Catalana de Protecció de Dades

Opinion in relation to the query made by the data protection representative of an entity regarding the possibility of providing the identification data of the company's personnel

A request for an opinion from the data protection officer (DPD) of an entity regarding the possibility of providing the identification data of station agents, inspectors, train drivers is submitted to the Catalan Data Protection Authority and staff from their own offices that provide their services in stations, trains and facilities, on a labor basis.

These people are considered public employees, according to the DPD.

In the consultation, it was stated that, on occasion, there are users who do not agree with the way station agents, auditors, machinists and office staff who provide their services in the stations, trains and facilities and present a complaint to the customer service, requesting the identification data of these specific people (name, surname, staff number) for the purposes of taking legal action against them.

In accordance with these antecedents, the DPD requests a statement regarding the following issues:

"a) It would be lawful data processing to facilitate the identification data of these workers, whether they are station agents, supervisors and/or machinists, who provide their services in stations, trains and/or facilities (...), to the user who has submitted a claim to the customer service (...), without having obtained the prior and express consent of the affected staff?"

*b) What would be the legality of the treatment provided for in article 6 of the RGPD?
In particular, what would be the cause of legality other than the explicit consent that could be given by the person concerned (station agents, inspectors, drivers, office staff)?"*

c) If so, what would be the personal data that could be provided (name and surname, personal number)?"

d) If they can be provided, it would be necessary for (...) to communicate to the affected person the fact that their data has been requested by a user based on a complaint received and they have been provided to this person user?"

Analyzed the inquiry, which is not accompanied by other documentation, in accordance with the report of Legal Advice, I issue the following report:

I

(...)

II

The issues raised by the entity's data protection officer are related to the communication of identifying data (name, surname and staff number) of station agents, auditors, machinists and own office staff who lend their services in stations, trains and other facilities, when they are required by users of the service who have submitted a claim to the customer service.

As indicated in the consultation, the people on whom the consultation is carried out are considered public employees.

In this context, the first question that arises is whether to provide the identification data of this staff to the user who has submitted a claim to the customer service, without having obtained the prior and express consent of the affected public employee, would be lawful treatment.

In order to answer the questions raised by the DPD, it is necessary to take into account that Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD)), establishes that all processing of personal data, understood as *"any operation or set of operations carried out on personal data or sets of personal data, whether 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, suppression or destruction"* (article 4.2 RGPD) must be lawful, fair and transparent in relation with the interested party (article 5.1.a)).

In order for a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD, which establishes:

"a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;

d) the treatment is necessary to protect the vital interests of the interested party or another natural person;

e) 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;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

(...)"

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of the LOPDGDD, data processing can only be considered based on the bases legal provisions of article 6.1.c) and 6.1e) of the RGPD when so established by a rule with the rank of law.

At the same time, according to article 86 of the RGPD: *"The personal data of official documents in the possession of some 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, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."*

Given this, mention should be made of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), which aims, among others, to *"regulate and guarantee the right of people's access to public information and documentation" (article 1.1.b)).*

The entity that requests the report is a public law entity, with its own and independent legal personality that acts as a commercial company and that is governed in accordance with the provisions of article 5 of its statutes, *"by these statutes, by Law 4/1985, of March 29, of the Statute of the Catalan Public Company, by the rules of civil, commercial and labor law, by the sectoral regulations governing land transport and, in everything that is applicable, by Legislative Decree 9/1994, of July 13, which approves the revised text of the Public Finances Law of Catalonia, by Law 11/1981, of December 7, on heritage, as well as for the rest of the applicable provisions, especially those relating to the exercise of administrative powers and guardianship relations with the public administration"*.

Therefore, the LTC and the regulation that develops it are applicable to the entity in accordance with the provisions of article 3.1.b) LTC.

Article 18 of the LTC establishes that *"people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1).*

According to article 2.b) of the LTC it is *"public information: the information prepared by the Administration and that which it has in its possession 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."*

In the case raised in the query, the identification data (name, surname, staff number) of the station agents, auditors, machinists and office staff who provide their services on a labor basis at the train stations and facilities of the entity must be considered public information for the purposes of the LTC which remains subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to the

public information can only be denied or restricted for the reasons expressly established by law (article 20 et seq.).

Therefore, the provisions of the LTC in relation to article 6.1.c) of the RGPD could constitute a legal basis for the communication, by the entity, of information about the personnel who provide services to their dependencies when they are requested by a user of the transport service.

However, to the extent that it is information that contains personal data, they may result apply the limits provided for in articles 23 and 24 of the LTC.

III

In cases where the information does not contain special categories of data in terms of Article 23 LTC, as would be the case of the information referred to in the query, access must be governed by the provisions of article 24 of the LTC, according to which:

"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 access, especially if it has a historical, statistical purpose or scientific, 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.*
- (...)."*

According to article 24.1 of LTC, access must be given to information directly related to the organization, operation or public activity of the administration that contains merely identifying personal data.

The merely identifying data of the personnel referred to in the query who have a work relationship with the entity are included within the provisions of article 24.1 LTC.

Thus, in the case raised in the query, if the information requested by a user of the service of the entity for the presentation of a claim is only the identification data of these workers, it would be necessary to facilitate access to this information in accordance with article 24.1 LTC except that, in the specific case, it had to the protection of the personal data of the supervisor involved prevail.

Apart from this there is still another additional element that can lead to the same conclusion. From the perspective of data protection, it should be noted that, according to the tenth additional provision of the LOPDGDD:

"The responsible persons listed in article 77.1 of this organic law may communicate the personal data requested by subjects of private law when they have the consent of the affected or appreciate that the applicants have a legitimate interest that prevails over the rights and interests of those affected in accordance with the provisions of article 6.1 f) of Regulation (EU) 2016/679".

The legal basis of article 6.1.f) RGDPR does not apply when data processing is carried out for the fulfillment of a mission carried out in the public interest or in the exercise of public powers of the person in charge. However, the tenth additional provision of the LOPDGDD provides for an authorization for communication based on the legitimate interest of third parties, as it could be, in this case, the affected users who request access to the data of those workers.

In the context raised in the consultation, the purpose of the access would be related to the defense of the interests of the person requesting since in order to take legal action to defend their interests, the users of the service who have complaints about the treatment received by an employee of the entity must be able to identify them.

In accordance with what has been presented so far, the answer to the first and second of the questions raised by the DPD is that the communication of the data would merely identify the workers of the entity to which the query refers, to a user who requests them to submit a claim, it can be considered a lawful treatment that has as a legal basis the provisions of the RLTC in relation to article 6.1.c) RGDPR (the treatment is necessary for compliance of a legal obligation applicable to the data controller).

IV

With regard to the personal data that can be communicated about these workers, and in order to answer the third of the questions, it is necessary to take into account sections 2 and 3 of article 70 of Decree 8/2021, of 9 February, on transparency and the right of access to public information (hereafter RLTC), provide.

"(..)

2. For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone number and addresses, postal and electronic, of professional contact, referring to personnel in the service of public administrations, senior officials and managerial staff in the public sector of public administrations.

In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document must be removed in particular and the handwritten signature. If the signature is electronic, the signed document must be published

electronically so that the properties of the electronic certificate used for the signature cannot be accessed.

The location data must be deleted in the event that it is not merely identifying data of the author in his position or staff in the service of the public administrations.

3. In the case of members of the forces and security forces or other groups that for security reasons require special protection, their identification with names and surnames must be replaced by the publication of a code or professional identification number.

 (...)"

Thus, from the outset there would be no obstacle to providing the data relating to the name and surname, the position or professional category, and the professional contact details.

However, in the case of forces and security forces, but also of other groups that for security reasons require special protection (this is stated for example in the opinion CNS 14/2022, in relation to the watchmen of private security), identification with first and last names must be replaced by the communication of a professional identification number.

In the case of the personnel referred to in the query, as long as they are not included in groups that require special protection, their identification data may be communicated in accordance with the terms of article 70.2 of the aforementioned RLTC.

V

Finally, the DPD considers whether it is necessary for the entity to communicate to the affected worker the fact that their data has been requested by a user based on a complaint received and they have been provided to this user.

With regard to this issue, article 31 of the LTC should be taken into consideration, which 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."

Thus, in order to be able to determine whether there are personal circumstances affecting the security guard whose data is requested that, exceptionally, could limit this right of access, it would be necessary to communicate to the affected persons the fact that their data have been requested by a user, so that they can make the allegations they consider appropriate.

In any case, in the communication to the affected person derived from article 31 LTC, it must be taken into account that in principle the identity of the person claiming must not be included (art. 31.3 LTC and 62.4 of the RLTC), unless exceptionally, in a motivated manner and after consultation with the applicant, he considers that communicating his identity may be essential for the defense of the rights and interests of the private security guard.

In short, from the point of view of data protection regulations, the entity should inform the affected person that their data has been requested by a user before providing them with their information, so that it can allege the personal circumstances it considers appropriate and, where appropriate, exercise the right of opposition provided for in article 21 of the RGPD.

However, it is necessary to take into account article 70.4 of the RLTC establishes:

"4. For the purposes of access to this purely identifying personal data, prior to the start of the provision of services or occupation of the position, the public administrations must inform the staff, senior positions and management personnel that this personal data may be disseminated or transferred, without the need to give them the transfer of the access request referred to in article 31 of Law 19/2014, of December 29, and article 62 of this decree.

In the communication, it is necessary to warn them of the rights to oppose it and to highlight, in a motivated way, the prevalence of the singular damage that the transfer may cause to their personal data or other constitutionally protected rights. Likewise, it must be indicated that the processing of this data is based on compliance with the legal obligation to allow the exercise of the right of access to public information."

This means that if the entity has communicated at the time of starting the employment relationship with the company (or at a later time for contracts formalized before the entry into force of the RLTC) the fact that its data identifiers can be transferred under the protection of 23 LTC and 70.2.i 3 RLTC, warning of the possibility of exercising your right to oppose it, it would not be necessary to transfer the access request.

conclusion

The entity formulating the query can communicate the first and last names and the position or category of the workers referred to in the query (of station agents, auditors, machinists and staff of own offices who provide their services in the stations, trains and facilities, in working conditions) at the request of the people using the service who have filed a claim against him. This communication would find qualification in article 6.1.c) RGPD in relation to the LTC. In the case of groups that require protection for security reasons, the communication should only include the professional identification number.



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The entity should inform the affected person that their data has been requested by a user before providing them with the information so that, if applicable, they can allege the personal circumstances on which the request is based their opposition to access. This, unless he had previously been informed about the possibility of these transfers, in accordance with the provisions of article 70.4 RLTC.

Barcelona, August 23, 2022

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