



Autoritat Catalana de Protecció de Dades

Opinion in relation to the consultation formulated by a city council on the implementation of a register of elderly people and people with special needs for protection actions in situations of extreme weather phenomena and fires

A letter from a city council is presented to the Catalan Data Protection Authority, in which the adequacy of the implementation of a register of elderly people and people with special needs in accordance with the data protection regulations is considered for the purpose of facilitate the action of the civil protection forces in situations of extreme weather phenomena and fires.

Specifically, it raises the following questions:

- If a record of these characteristics conforms to the protection regulations of data
- If so, how should it be implemented to comply with the regulations for the protection of data
- If it is possible to use register data to configure the register.
- If a data protection impact assessment is required.

Attached to the consultation is a copy of the agreement of the Municipal Plenum for the implementation of the aforementioned register.

Having analyzed the query and the documentation that accompanies it, in view of the applicable regulations in force, and in accordance with the report of the Legal Adviser, I issue the following opinion.

I

(...)

II

The implementation of a municipal register of elderly people and people with special needs to facilitate the action of civil protection intervention teams in emergency situations caused by extreme weather phenomena and fires, to which this consultation refers, constitutes a processing of personal data that remains subject to personal data protection legislation.

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 must be lawful, fair and transparent (article 5.1.a)).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based, either the consent of the affected person (letter a)), or any of the other legal bases provided for in the same precept. In the field of public administrations, context in which we find ourselves, of particular interest are the legal bases relating to which the treatment will be lawful if *"it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment"* (article 6.1 .c)

RGPD) or if *"it is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment"* (article 6.1.e) RGPD).

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 (hereinafter, LOPDGDD), the data processing can only be considered based on the legal bases of article 6.1.e) ic) of the RGPD when this is established by a rule with the rank of law.

Law 7/1985, of April 2, regulating the bases of the local regime (hereafter, LRBRL), establishes, for the purposes that concern, *that "the Municipality, for the management of its interests and in the scope of its competences, can promote activities and provide public services that contribute to satisfying the needs and aspirations of the neighborhood community (...)"* (article 25.1).

And article 25.2 of the LRBRL provides that *"the Municipality will in any case exercise its own powers, under the terms of the legislation of the State and of the Autonomous Communities, in the following matters: (...) f) Local Police , civil protection, fire prevention and extinguishing. (...)."*

In similar terms, the Consolidated Text of the Municipal and Local Regime Law of Catalonia (hereinafter, TRLMRLC), approved by Legislative Decree 2/2003, of April 28, establishes that the municipality has its own powers in matters of civil protection , prevention and extinguishing of fires (article 66.3.c)).

For its part, Law 4/1997, of 20 May, on civil protection of Catalonia, which has as its object *"civil protection in Catalonia, which includes actions intended to protect people, property and the environment in situations of serious collective risk, catastrophes and public calamities"* (article 1.1), recognizes the mayors as civil protection authorities (article 40) and the municipalities as *"the basic entities of civil protection in Catalonia"* and with *"general capacity for action and planning in this matter"* (article 47).

The aforementioned precepts of the local regime legislation and of the aforementioned sectoral regulations attribute to the councils competences in the matter of planning actions in situations of risk for the population, which can enable the creation of a register with the information referring to the neighbors of the municipality which, given the concurrence of certain circumstances, would require a quick and specific action by the civil protection forces in the event of an emergency situation being declared in the municipality, as indicated in the consultation.

Consequently, the legal basis of article 6.1.e) of the RGPD, to which reference has been made, could legitimize the processing of data that is necessary for this purpose. This, as long as the rest of the principles and guarantees established in the data protection legislation, which are mentioned in the following sections of this opinion, are respected.

The consultation also states that the contact information of the persons responsible for persons with special needs who are included in the register may be included in the register, if applicable. In these cases, the processing of the data of these other persons by the City Council, which could be obtained either from the same affected person or from the vulnerable person, could also be based on the legal basis of the article 6.1.e) of the RGPD to which reference has been made, to the extent that it would be related to the exercise of municipal powers in this matter.

III

The City Council considers whether it is possible to use data from the Municipal Register of Inhabitants in order to set up the aforementioned register.

Article 16.1 of the LRBRL, already cited, defines the Municipal Register in the following terms:

"1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)"

At the outset, it should be noted that the Municipal Register does not provide information on all the people who can reside in the municipality, but only on those who are registered to reside there for most of the year.

The LRBRL (and, in the same sense, the TRLMRLC) establishes the obligation of all residents to register in the Register of the municipality where they have established their residence with a triple purpose: to determine the population of a municipality, to be required for acquire the status of resident and serve to prove residence and usual address (articles 15 and 16 LRBRL).

Likewise, it establishes that the registration in the Municipal Register will contain the following data as mandatory: first and last name, sex, usual address, nationality, date and place of birth, number of the identity document (or, for foreigners, the card residence or identity document number), certificate or school or academic degree, and, finally, those data that may be necessary for the preparation of electoral censuses, as long as fundamental rights are respected (article 16.2 LRBRL).

Apart from these data, article 57.2 of the Regulation of Population and Territorial Demarcation of Local Entities, approved by Royal Decree 1690/1986, of July 11 (RPDTEL), states that in the Municipal Register they can be collected with the following data are voluntary:

"a) Designation of the persons who can represent each neighbor before the municipal administration for land use purposes.

b) Telephone number.”

According to article 17.1 of the LRBRL *"the formation, maintenance, review and custody of the Municipal Register corresponds to the City Council, in accordance with what is established by State legislation. (...)"*

The processing of the data that make up the Municipal Register of Inhabitants by the City Council, like any other processing of data, remains subject, among others, to the principle of purpose limitation (article 5.1.b) of the 'RGPD').

According to this principle *"personal data will be (...) collected for specific, explicit and legitimate purposes, and will not be subsequently processed in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose") ;"*

It must, therefore, be borne in mind that the data of the Municipal Register can only be used for a different subsequent purpose (such as the creation of this register) to the extent that it is not incompatible with the triple purpose that justified its initial collection (determine the population of the municipality, be a requirement to acquire the status of resident, and serve to accredit residence and habitual address).

Regarding the processing of data for further purposes, article 6.4 of the RGPD provides the following:

"4. 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 to safeguard the objectives indicated in article 23, section 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 others

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."

Therefore, in accordance with the provisions of article 6.4 reproduced, the processing of data for a different purpose can be based either on the consent of the affected person, or on the law of the Union or the Member States that constitutes a safeguard measure

of the objectives indicated in article 23.1 of the RGPD, or in passing the compatibility analysis in accordance with the criteria listed in the same article.

In this sense, and with regard expressly to the data of the Municipal Register, this Authority has considered in different opinions (among others, CNS 9/2013, CNS 67/2015, CNS 46/2016, CNS 12/2017, CNS 47/2017, CNS 39/2018, CNS 19/2019, CNS 2/2020, CNS 32/2020 or CNS 6/2021, available on the Authority's website) which, in view of the type of personal data that must be included in the Register (article 16.2 LRBRL), it is understood that there may be municipal purposes that could enable the processing of this data to the extent that they are not incompatible with the purposes of the Register. Specifically, compatibility has been determined for the exercise of the powers that the local regime legislation attributes to the town councils, mainly following the provisions of articles 25 and 26 of the LRBRL (and, in similar terms, the articles 66 and 67 of the TRLMRLC), which require being able to identify the people resident in the municipality.

It has also been pointed out in the aforementioned opinions that, given that the LRBRL itself (article 16.3) admits the communication of data from the Municipal Register to other public administrations that request them when they are necessary for the exercise of their powers and exclusively for matters in which residence or domicile are relevant data - a possibility also endorsed by the Constitutional Court (STC 17/2013, of January 31, cited) -, with greater reason it can be admitted that the different units or administrative bodies of the same municipality can access these data when they are necessary for the exercise of their functions and when the given residence or address is relevant.

As we have seen, the local regime legislation (article 25.2.f) LRBRL and article 66.3.c) TRLMRLC) and the implementing sectoral legislation (Law 4/1997) attribute powers to the City Council in matters of civil protection, which include the implementation of different actions, within the framework of municipal action plans, among them, informing people who may be affected by situations of serious risk (article 4 Law 4/1997) and the adoption of measures to 'emergency such as agreeing the evacuation (article 9 Law 4/1997), among others.

In the present case, the Registry can offer relevant information to locate certain people who are in some of the vulnerable situations referred to in the Motion that accompanies the consultation (elderly people, who live alone, especially in isolated homes or located in environments qualified as disseminated in the municipality) for the purposes of facilitating a quick and more effective action of the civil protection forces in the event of extreme weather situations and/or fires in the area.

For the purpose of carrying out these actions, the data relating to the address is relevant, given that the condition of being a resident of a certain neighborhood or area will determine the need to activate the cash on a preferential basis.

Apart from the data relating to the address, in the present case the data relating to the date of birth and having the certainty that the person resides alone at the address will be equally relevant.

On the other hand, the data relating to the telephone number that is declared voluntarily in the Register, in order to be able to contact it for the purpose of exercising these powers, also becomes relevant.

In view of this, the use of this data from the Register for the creation of the register for the aforementioned purposes can be said to have as a legal basis the fulfillment of a mission in the public interest or the exercise of public powers conferred on the 'City Council (Article 6.1.e) RGPD) and would be compatible with the purposes of the Register covered by the local legislation itself and the sectoral regulations.

Beyond the enablement that Article 16.3 of the LRBRL may offer, we should reach the same conclusion if we do the compatibility analysis according to the criteria of Article 6.4 of the GDPR.

In this sense, it must be taken into consideration that the data subject to treatment (Article 6.4.a) RGPD) would include identifying information and personal characteristics (name, surname, address, date of birth and telephone), so that its treatment for these ulterior purposes it should not lead to a special impact on the right to data protection of the affected persons (Article 6.4.c) RGPD), nor serious consequences for them (Article 6.4.d) RGPD). On the other hand, it would be within the expectations that any citizen can have the possibility that, in the face of an emergency situation declared in the municipality in which he resides, the data declared in the Municipal Register can be used by the City Council to communicate the situation of serious risk for his person and to, where appropriate, direct the necessary funds to guarantee his protection.

Therefore, the use of the aforementioned data from the Municipal Register to set up the register would result in lawful data processing.

IV

According to the information provided in the consultation, the register in question will also include people who present special needs for other reasons, such as people with disabilities, reduced mobility, diseases with specific drug treatments or in need of 'special devices, etc. It is pointed out that the details of the specific circumstances of each person should be recorded in the register to facilitate the work of the intervention teams as the case may be.

It should be borne in mind that, when the treatment affects special categories of data, as is the case of data relating to health (Article 4.15) RGPD), apart from having a legal basis of those established in Article 6.1 of the 'RGPD, it is also necessary to have one of the exceptions established in article 9.2 of the RGPD, in order to be able to consider the processing of data lawful.

Article 9 of the RGPD, in relation to the processing of data of special categories of data, provides the following:

"1. The processing of personal data that reveal ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation is prohibited, and the processing of genetic data, biometric data aimed at uniquely identifying a natural person, data relating to the health or data relating to the sexual life or sexual orientation of a natural person.

2. Section 1 will not apply when one of the following circumstances applies: a) the interested party gives his explicit consent to the treatment of said personal data with one or more of the purposes specified, except when the Law of the Union or the Member States establish that the prohibition mentioned in section 1 cannot be lifted by the interested party; b) the treatment is necessary for the fulfillment of obligations and the exercise of specific rights of the person responsible for the treatment or of the interested party in the field of labor law and of social security and protection, to the extent that this is authorized by the Law of the Union or member states or a collective agreement in accordance with the law of the member states that establishes adequate guarantees of respect for the fundamental rights and interests of the interested party²⁷; c) the treatment is necessary to protect the vital interests of the interested party or another natural person, in the event that the interested party is not physically or legally able to give their consent; d) the treatment is carried out, within the scope of its legitimate activities and with due guarantees, by a foundation, an association or any other non-profit organization, whose purpose is political, philosophical, religious or trade union, provided that the treatment refers exclusively to current or former members of such organizations or persons who maintain regular contact with them in relation to their purposes and provided that personal data is not communicated outside of them without the consent of the interested parties; e) the treatment refers to personal data that the interested party has made manifestly public; f) the treatment is necessary for the formulation, exercise or defense of claims or when the courts act in the exercise of their judicial function; g) the treatment is necessary for reasons of an essential public interest, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish measures adequate and specific to protect the fundamental interests and rights of the interested party; h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker's labor capacity, medical diagnosis, provision of health or social assistance or treatment, or management of health and social care systems and services, on the basis of the Law of the Union or of the Member States or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in section 3; i) the treatment is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health, or to guarantee high levels of quality and safety of health care and medicines or health products, on the basis of the Law of the Union or of the Member States that establishes appropriate and specific measures to protect the rights and freedoms of the interested party, in particular professional secrecy, j) the treatment is necessary for purposes of archiving in public interest, purposes of scientific or historical research or statistical purposes, in accordance with article 89, paragraph 1, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, respect the essential

the right to data protection and to establish appropriate and specific measures to protect the interests and fundamental rights of the interested party.”

Given the purpose pursued, it does not seem that the exceptions provided for in letters b), d), e), f), g), i), h) ij) can be applied. Instead, it seems that it will be necessary to resort to the exception provided for in letter a).

It cannot be ruled out that in specific cases where an emergency situation has already occurred, the legal basis provided for in letter c) can also be used (the treatment is necessary to protect the vital interests of the interested party, in the event that he is not capable, physically or legally, to give his consent), but it does not seem that in general this authorization can be used to incorporate data into the register at a time when there is not yet an emergency situation.

With regard to the exception relating to the explicit consent of the interested person, provided for in article 9.2.a) of the RGPD, it must be taken into consideration that in order to be considered valid, the consent must meet the requirements that establishes the RGPD, this must be a *"specific, informed and unequivocal manifestation of free will by which the interested party accepts, either by means of a statement or a clear affirmative action, the treatment of data that concerns him"* (article 4.11 RGPD). And, when dealing with special categories of data, consent must also be explicit (Article 9.2.a) RGPD).

It should be noted that in the specific case of public administrations, given the imbalance between the parties, in order for the consent to be considered as free consent, the affected person must have a real capacity to choose. In other words, that there are no negative consequences in your relationship with the administration for not having given your consent.

Therefore, in the context analyzed, these people with special needs must have the possibility to refuse consent for their inclusion in the register, without this entailing a detriment or depriving them of any basic service. That is to say, without this going to the detriment of your adequate protection against eventual emergency situations that may occur in the municipality, beyond the fact that your specific circumstances that you have decided not to take into account cannot be taken into account contribute

Given this, in the event of a lack of consent, the City Council must inform these people, like the rest of the population, of the communication channels enabled to inform themselves in the event of emergency situations (radio stations, television, web, social networks, etc.), as well as the possibility of calling 112 in case of needing help during an emergency, and, in the event that your vulnerable situation also derives from other circumstances not linked to your state of health, they must be able to register in the register, like any other resident, in accordance with those other circumstances.

V

Beyond the necessary legality of the intended data processing (articles 6.1 and 9.2 RGPD), which has been mentioned in the previous sections, the implementation of the register must conform to the rest of the principles and guarantees established in the data protection regulations.

In this sense, and among other aspects, the following must be taken into account:

- Principle of transparency in relation to the affected persons (article 5.1.a) RGPD).

It is necessary to provide the affected persons with information on the conditions and circumstances relating to the processing of their data, in a concise, transparent, intelligible and easily accessible manner.

Specifically, when the data is collected from the affected person, all the information referred to in article 13 of the RGPD must be provided. And, when the data is not obtained from the affected person, but from the municipal register of inhabitants, it would be necessary to inform in addition about the categories of data subject to treatment and the source from which this personal data comes (article 14 RGPD).

Point out that, in order to facilitate compliance with this obligation, the LOPDGDD (article 11) has provided for the possibility of providing the affected person with the required information by layers or levels.

This method consists in presenting "basic" information (summary information) at a first level, so that you can have a general knowledge of the treatment, indicating an electronic address or other means where it can be accessed easily and immediately to the rest of the information, and, at a second level, offer the rest of the additional information (detailed information).

Regarding these issues, it is recommended to consult the Guide for the fulfillment of the duty to inform the RGPD available on the Authority's website.

- Purpose limitation principle (Article 5.1.b) RGPD).

It must be guaranteed that the data collected in the register will only be treated with the specific purpose of facilitating the action of the civil protection forces in the event of an emergency situation being declared in the municipality and that they will not be used for other purposes incompatible

- Principle of data minimization (Article 5.1.c) RGPD).

It must be guaranteed that only the data strictly necessary to achieve the purpose intended for the creation of the register will be collected.

Thus, in view of the considerations made in section III of this opinion, the use of data from the Register to make up said record should only cover the data relating to the name, surname, address, year of birth and , if applicable, telephone number of people over 65 years of age in the municipality who live alone and in isolated or scattered homes.

And, in view of the considerations made in section IV of this opinion, only a brief indication of the special situation presented by people with special needs should be included in the register

It could also include, if applicable, the name, surname and telephone number of the person responsible.

- Principle of accuracy (Article 5.1.d) RGPD).

This principle requires that personal data be accurate and up-to-date so that they accurately reflect the current situation of the affected person. For this reason, it is necessary to foresee mechanisms that guarantee the quality of the personal information incorporated in the register, in such a way that the data processed are accurate and updated at all times.

- Principle of data integrity and confidentiality (Article 5.1.f) RGPD).

The data included in the register must be treated in such a way that its security is adequately guaranteed, including protection against unauthorized or unlawful processing and against its accidental loss, destruction or damage, through appropriate technical and organizational measures .

For this reason, it is necessary to carry out a risk analysis and, from there, adopt the appropriate security measures to safeguard the right to data protection of the affected persons if they are required in accordance with the provisions of the article 32 of the RGPD and the National Security Scheme (additional first provision of the LOPDGDD).

Likewise, it is necessary to ensure that the data in the register is treated confidentially by all the people involved in its treatment or who may have access to it for the purpose of exercising the functions attributed to them.

- Registration of processing activities (article 30 RGPD).

It is necessary to incorporate in the Register of processing activities and in the publication to be carried out of the Inventory of the City's processing activities the processing of data that derives from the implementation of the intended register, in the terms provided for, respectively , in article 30 of the RGPD and in article 31 of the LOPDGDD.

- Data protection impact assessment (AIPD).

In the consultation, it is specifically considered whether in the present case the preparation of an AIPD is required.

Article 35.1 of the RGPD establishes the obligation of those responsible for the treatment to carry it out prior to the start of the treatment, when it is likely that due to their nature, scope, context or purpose they involve a high risk for the rights and freedoms of natural persons, a high risk which, according to the RGPD itself, is increased when the treatments are carried out using new technologies.

Section 3 of the same article 35 of the RGPD establishes that the AIPD will be required, in any case, in the following cases:

"a) systematic and comprehensive evaluation of personal aspects of physical persons that is based on automated processing, such as profiling, and on the basis of which decisions are made that produce legal effects for physical persons or that significantly affect them in a similar way ;

b) large-scale processing of the special categories of data referred to in article 9, paragraph 1, or of personal data relating to convictions and criminal offenses referred to in article 10, or) large-scale systematic observation of a public access area.”

To determine what is to be understood by "large scale", it can be taken into account that the Article 29 Group, in its opinion on the appointment of data protection delegates, considers that to assess whether the treatment is done on a large scale the following must be taken into account:

- o The number of people affected, either in absolute terms or as a proportion of a certain population.
- o The volume and variety of data processed.
- o The duration or permanence of the treatment activity.
- o The geographical extent of the treatment activity.

In the case at hand, it seems that the treatment could meet the conditions that may require the preparation of an AIPD, given that it would involve the use of special categories of data, referred to in article 9.1 of the RGPD, of vulnerable subjects or those with special needs, without ruling out that large-scale treatment could be considered, in terms of attention to the population ultimately affected.

Bear in mind that we are dealing with a doubly vulnerable group: on the one hand because of their age, and on the other because of their state of health or the situation of isolation. The fact of having a list of all the people in the municipality who are in a particularly vulnerable situation requires adopting all the necessary measures to avoid that an inappropriate use or a loss of confidentiality of this new register could increase even further plus their vulnerability.

All in all, the analysis of whether or not it is necessary to carry out an AIPD would correspond to the City Council in view of the circumstances of the specific case and in view of the circumstances foreseen not only in article 35.3 of the RGPD, cited, but also in article 28.2 of the LOPDGDD and the List of types of treatment operations that must be subject to AIPD published by this Authority on its website.

To carry out an AIPD, you can take into account the Practical Guide on impact assessment relating to data protection of this Authority and also the application to carry out the impact assessment, both available on the website of the Authority.

Conclusions

The creation of a register of residents of the municipality who, given the concurrence of certain circumstances, would require a rapid action by the civil protection forces in emergency situations would be lawful on the basis of articles 6.1.e) and 9.2.a) of the RGPD in the terms indicated in this opinion.



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The City Council can use the data from the Municipal Register to set up this register, as these are compatible purposes covered by the local legislation itself and the applicable sectoral regulations. On the other hand, the incorporation of information related to people's health would require their explicit consent.

The implementation of the register must comply with the rest of the principles and obligations of the RGPD and the LOPDGDD, especially the preparation of an AIPD.

Barcelona, September 8, 2022

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