

Opinion in relation to a query about a parent's access to information about their daughter's enrollment in the University Entrance Tests

A letter is submitted to the Catalan Data Protection Authority regarding the access requested by a parent to the information regarding the enrollment in the University Entrance Tests (PAU) of their minor and older daughter of 14 years, of whom he has shared parental authority.

Specifically, it raises the following questions:

- If the daughter's consent is required to access her personal data.
- If it is possible to provide the requesting parent with the documentation provided by the daughter in order to benefit from the total exemption from the payment of the amount of the PAU fee (accreditation of the status of victim of gender violence the other parent).

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

At the outset, the query raises the question of whether the parent requires the consent or authorization of the daughter, older than 14 and younger than 18, to access her personal data, in this case, related to their registration in the PAU.

Article 15 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD) recognizes the right of the affected person to access the own personal information available to the data controller and to obtain the information specified in the same article (the purposes, the categories of data, the recipients to whom they will be communicated, the expected period of retention of the data, the rights relating to the protection of your data that you can exercise, when the information about the origin of the data, about the existence of automated decisions and guarantees in case of international transfers is appropriate). In addition, this right covers the possibility of obtaining a copy of the personal data subject to treatment (section 3).

In relation to the exercise of the right of access, as well as the rest of the rights to informative self-determination, article 12 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), has the following:

"1. The rights recognized in articles 15 to 22 of Regulation (EU) 2016/679 may be exercised directly or through a legal or voluntary representative. (...)

5. When the laws applicable to certain treatments establish a special regime that affects the exercise of the rights provided for in Chapter III of Regulation (UE) 2016/679, it will be in accordance with those provisions.

6. In any case, the holders of parental authority may exercise the rights of access, rectification, cancellation, opposition or any other that may correspond to them in the context of this organic law in the name and representation of children under the age of fourteen. (...)."

Article 12.6 of the LOPDGDD provides that "in any case" holders of parental authority may exercise their rights in relation to children under 14 years of age. However, as this Authority has decided on previous occasions (among others, opinions CNS 58/2017, CNS 10/2018, CNS 9/2019, CNS 17/2021 or CNS 44/2021, available on the website of the 'Authority'), this regulatory provision does not exclude the possibility that these same holders may exercise their rights to informative self-determination also in relation to minors over the age of 14, given the applicable regulations.

It should be borne in mind that article 236-1 of Book Two of the Civil Code of Catalonia (hereinafter, CCC), approved by Law 25/2010, of July 29, provides that the parents are the holders of parental authority with respect minor children not emancipated.

The exercise of parental authority over children involves their legal representation, as established in article 236-18.1 of the CCC. The second section of the same article 236-18 of the CCC excludes from the legal representation of children, among others, "*acts relating to personality rights, unless the laws that regulate them establish something else.*" In this case, the possibility for the right of access to be exercised by representation is expressly provided for in article 12 of the LOPDGDD.

Therefore, the parents of minors, to the extent that they exercise their legal representation based on the provisions of the aforementioned regulations, must be able to exercise their rights to informative self-determination on behalf and representation of the minors and, consequently, they must be able to have access to the information of minors, under the terms of article 15 of the RGPD, and, where appropriate, exercise the rest of the rights provided for in the regulations.

This, without prejudice to the fact that the data protection regulations establish, as a general rule, that minors who are over 14 years of age must be able to exercise the rights of informational self-determination for themselves.

In this sense, given that minors who are over 14 years of age have the capacity to consent to the processing of personal data (Article 7.1 LOPDGDD), they must also be able to exercise the rights inherent in informative self-determination, because

it would not make sense to recognize their capacity to consent to the treatment and not to exercise the rights to informative self-determination.

In any case, as this Authority has done in the aforementioned opinions, the fact that the regulations provide for the exercise of the aforementioned rights by minors over the age of 14 should not lead to the conclusion that the parents who have parental authority do not can access their information or exercise the rest of their informational self-determination rights.

In this sense, it should be borne in mind that parental authority is an inexcusable function that is exercised in the interest of the children (Article 236-2 CCC) and that the legal system attributes to the holders of parental authority a series of duties in relation with the children (article 236-17.1 CCC), which would justify access to the information of minors subject to their authority and, by extension, the exercise of the rest of the rights to informative self-determination on behalf of minors, including minors who are over 14 years old.

Point out that the CCC provisions cited do not foresee that the exercise of rights by the holders of parental authority in the area in question is subject to the prior authorization or consent of the minor himself. Among other things, because this would distort the actual exercise and purpose of parental authority.

Therefore, without prejudice to the fact that the minor daughter over the age of 14 can exercise the rights to informative self-determination for herself, the father, who would hold shared parental authority based on the information he has, must also be able, with the character in general, exercise these rights in the name and representation of the minor, without the need for authorization or consent.

At this point, note that, in certain cases, given the concurrence of certain circumstances and in accordance with the applicable regulations, the exercise of these rights by parents or legal representatives could be limited.

Thus, in the event that parental authority is suspended (Article 336-6 CCC), the exercise of the rights in question by the person exercising said parental authority would be impossible, at least while the suspension or deprivation lasts of said power.

It would also be necessary to take into account the possible existence of a conflict of interests between the parent who exercises parental authority and the minor children (second paragraph of article 238-16.2.c) CCC).

In relation to this circumstance, it is necessary to take into account article 17.1 of Law 14/2010, of 27 May, on the rights and opportunities in childhood and adolescence (LDOIA), according to which *"children and adolescents can exercise and defend their rights themselves, unless the law limits this exercise. In any case, they can do it through their legal representatives, as long as they don't have interests that conflict with their own"*.

According to article 5 of the LDOIA:

"1. The best interest of the child or adolescent must be the inspiring and foundational principle of public actions."

2. Rules and public policies must be evaluated from the perspective of children and adolescents, to ensure that they include relevant objectives and actions aimed at satisfying the best interests of these people.

Children and adolescents must actively participate in this assessment.

3. The best interests of the child or adolescent must also be the inspiring principle of all the decisions and actions that concern them adopted and carried out by the parents, by the guardians or guardians, by the public or private institutions in charge of protecting and assisting him or by the judicial or administrative authority.

4. In order to determine the best interests of the child or adolescent, their needs and rights must be taken into account, and their opinion, their wishes and aspirations must be taken into account, as well as their individuality within the family and social framework".

In accordance with these regulatory provisions, the exercise of the rights of informative self-determination on behalf of minors that parents or legal representatives must be able to exercise in general may be limited if the person in charge considers that there is a conflict between them and the own minor, in which case the general principle of protection of the minor's best interests must prevail (Article 5 LDOIA), in the terms provided for in the regulations.

The consultation does not state that in the specific case there are circumstances such as those described (suspended power of attorney and/or conflict of interest with the minor), nor that the applicant has participated in the events that have given rise to the situation of violence).

Therefore, and without prejudice to the fact that it is appropriate to transfer the request to the minor (over 14 years old) and to the other parent, and from whom there is information that may lead to a different assessment, the father must be able to exercise, on behalf of your minor daughter, the right of access provided for in article 15 RGD, and access your daughter's information available to the administration in relation to registration in the PAU, without the need for your consent

III

Focusing on the request for access referred to in the query, in the present case the parent requests access and specifically obtains a copy of the application for registration in the PAU of his daughter, as well as the fee and the documentation presented that would have allowed him to benefit from the exemption from paying his amount.

This documentation, of which the administration has attached a copy, includes a copy of the family book and a certificate certifying that the other parent is a victim of gender-based violence.

According to article 27.2-3.e) of the revised text of the Law on public rates and prices of the Generalitat of Catalonia, approved by Legislative Decree 3/2018, of June 25, victims of gender violence and their dependent children they are exempt from paying the fee for registration in the PAU.

In view of this, the information about the registration in the PAU in respect of which the parent wants to access and obtain a copy includes not only data related to his daughter and him

same, to which he could have access on the basis of articles 15 of the RGPD and 12 of the LOPDGDD, previously examined, but also data of the other parent.

The query asks, specifically, whether the aforementioned certificate can be given to the parent who requests access to the file, but it must be taken into account that the concurrence of this assumption that gives the right to the exemption from the payment of the registration also it must be stated, based on the information available, in the same application for registration at the PAU (section "type of registration").

The requesting parent's access to the information of the other parent constitutes data processing (Article 4.2) RGPD) which, to be lawful (Article 5.1.a) RGPD), requires the concurrence of some of the legal bases established in article 6.1 of the RGPD. In this sense, article 6.1.c) of the RGPD provides that the treatment will be lawful if *"it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment"*.

For its part, article 86 of the RGPD provides that *"the personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, organism or entity in accordance with the Law of the Union or 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."*

In this sense, you should take into account Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC), which aims to regulate and guarantee the transparency of the activity public

The first additional provision of the LTC states that *"the access of the interested parties to the documents of the administrative procedures in progress is governed by what is determined by the legislation on legal regime and administrative procedure"*.

In accordance with this provision, when the access request is made by a person interested in an administrative procedure that is pending, the administrative procedure regulations will apply.

In this regard, article 53.1.a) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), recognizes the persons interested in an administrative procedure the right to access and obtain a copy of the documents contained in the procedures in which they have this condition.

And, in the same sense, article 26 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, recognizes that citizens who have the status of persons interested in a administrative procedure in progress have the right to access the file and obtain a copy of the documents that are part of it.

In the present case, it should be borne in mind that the parent, insofar as he exercises the legal representation of the minor, would have the status of an interested person (article 4 LPAC) and that, according to the attached documentation, we would be facing a

procedure not completed at the time of the access request. Therefore, the right of access regulated by the administrative procedure regulations should be taken into account.

The applicable administrative procedure legislation recognizes the right of interested persons to access the information contained in the procedure and to obtain copies of it in fairly broad terms. This does not mean, however, that this right of access is an absolute right. It must be borne in mind that if it comes into conflict with other rights, as in this case it could be the fundamental right to the protection of personal data (Article 18.4 EC), it will be necessary to weigh up the different rights at stake, in order to decide which one should prevail and to what extent.

In fact, the LPAC itself establishes that it is necessary to apply the limitations provided for in the transparency legislation when it regulates the obtaining of copies or access to the file of the persons interested in the hearing procedure provided for in article 82.1. This provision must also be understood as applying with respect to the right of access provided for in article 53.1.a) of the LPAC, and, consequently, what is established in articles 23 and 24 of the LTC.

IV

In view of this, the access of the parent to the information relating to the other parent contained in the requested documentation would require a reasoned weighting between the public interest in the disclosure of the information and the rights of the affected person, as article 24.2 of the LTC provides:

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

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

For the purposes of said weighting, special consideration should be given to the nature of the information subject to access. Although access to the name and surname of the other parent does not seem to pose problems from a data protection perspective, insofar as both parents exercise parental authority over the daughter jointly (Article 236-8 CCC) and, therefore, it could be considered that the identity of the mother is also information that affects her daughter, and what she might have access to, the information affected by access goes beyond these merely identifying data and reveals the existence of a situation of particular vulnerability in the other parent, such as being a victim of gender violence.

Despite not being a special category of personal data, under the terms of article 9 of the RGPD, it is information deserving of a special reservation or confidentiality, as can be seen from the sectoral regulations that result of application.

In this sense, Organic Law 1/2004, of December 28, on comprehensive protection measures against gender-based violence, provides that *"in actions and procedures related to gender-based violence, the privacy of the victims will be protected; in particular, his personal data, those of his descendants and those of any other person who is under his care or custody"* (article 63.1).

Also, with regard to those cases of gender-based violence associated with acts of sexual violence, Organic Law 10/2022, of September 6, on the comprehensive guarantee of sexual freedom, provides that *"in the actions and procedures related to the sexual violence, the privacy of the victims will be protected, and especially their personal data"* (article 50.1).

At the same time, Law 5/2008, of April 24, on the right of women to eradicate gender-based violence, establishes, as a guiding principle in the interventions of the public authorities, *"the active commitment to guarantee the protection of the data of personal character of women in situations of violence (...)"* (article 7.1).

In these cases, it is necessary to bear in mind the greater impact that the disclosure of this condition can have on the privacy of victims of gender violence, given that their personal safety could be compromised. The special data protection needs of this vulnerable group require extreme precautions in the treatment of this type of information and, therefore, this should act as a limit to the right of access to this type of information by a third party.

In turn, it should be borne in mind that in a case such as the one examined, the applicant is the ex-partner of the victim of gender violence, to whom the requested information refers, and there is no sufficient information about the current personal and/or judicial situation between both parents.

In view of what this situation is and in view of the situations that can justify the recognition of the status of victim of gender violence (Agreement of the Equality Sectoral Conference, of November 11, 2021, approved by Resolution of 2 of December 2021, of the Secretary of State for Equality and against Gender Violence), revealing information about the victim could be counterproductive and could even put the physical integrity of the affected parent at risk.

The information about the fact that the daughter has benefited from an exemption from enrollment linked to the existence of a situation of gender-based violence, may be relevant for the requesting parent from an economic point of view. In fact, paying attention to the terms of the access request, it seems clear that the request for the documentation would be motivated by the fact of having become aware of this free of charge through a communication received from the study center of the daughter

According to the divorce settlement agreement, a copy of which is attached, both parents would have the obligation to meet the extraordinary expenses of the minor in equal parts,

among which, those relating to tuition fees and other school expenses. Therefore, the existence of an exemption affects both parents.

On the other hand, and unless the parent had participated in some way in the situation of gender violence that allowed him to have direct knowledge of it (a circumstance that is unknown given the information available), if in the communication coming from the center of studies of the daughter only identified the existence of a situation of gender violence, but did not identify who the victim was, this can generate in the requesting parent the doubt of whether the direct victim of gender violence is the daughter, the other parent or both people.

And, in short, any parent who exercises parental authority has a legitimate interest in knowing whether a situation of gender-based violence has occurred in the family environment of the minor daughter, given that it is a situation that affects, or may end affecting, the minor itself.

Taking these circumstances into account, access to the said certificate would be justified insofar as it contained only the information relating to the existence of a situation of gender-based violence, the person who suffered it and the exemption from the PAU registration fee derived from this circumstance.

In any case, it would be advisable to transfer the application received to the affected parent, so that she can make the allegations she deems appropriate.

Conclusions

The exercise of the right to informative self-determination by the parent who holds the shared parental authority of the minor over 14 years of age does not require authorization from this minor, without prejudice to the fact that it could be limited, if applicable, in certain cases by the 'best interest of the minor.

In the light of the information available, it would be justified for the parent to have access to the certificate attesting to the status of a victim of gender violence of the other parent provided in the registration process of the common daughter if only the information relating to the existence of a situation of gender violence, the person who suffered it and the exemption derived from this circumstance.

Barcelona, September 16, 2022