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Autoritat Catalana de Protecció de Dades

Opinion in relation to the query made by a city council on the processing of the data referring to the address of the habitual residence in the electronic notification of administrative acts

A letter from a city council is being presented to the Catalan Data Protection Authority in which it considers whether listing the address of the habitual residence in the electronic notifications of administrative acts to a working person would contravene the data protection regulations.

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 City Council points out in its consultation that it uses a file and documentation manager for the processing of municipal files, which is fed by a database containing the data provided by those who address an instance or request in the City Council, including its public employees.

According to the City Council, this database relating to interested persons includes their name, address and contact details (mobile phone and email).

It is explained below that this manager allows to automatically generate the notification of the resolution or administrative act that must be carried out to the interested person electronically through the ENOTUM platform. It is added that the program includes the address of the person concerned's usual address in the notification by default.

In turn, the City Council points out that one of its employees has asked that the notifications made to her not include her address, given that these are carried out by electronic means. I would also have asked to be removed from the electronic notifications already practiced.

Given this, it requests the opinion of this Authority on whether the record of the address of the working person in said notifications would violate the data protection regulations and whether, therefore, it should be deleted.

III

From the point of view of data protection, it is important to bear in mind that the City Council, as responsible for the processing of personal information at its disposal (Article 4.7) of Regulation (EU) 2016/679, of the Parliament and of the Council European, of April 27, 2016, General of Data Protection (hereafter, RGPD)), the task of guaranteeing and being able to demonstrate that the data treatments it carries out are adapted at all times to the regulations of data protection (article 5.2 RGPD, relating to the principle of proactive responsibility). And this regardless of the means and/or information systems used for that purpose.

In accordance with article 5 of the RGPD, data processing carried out by public administrations, apart from having a legal basis established in article 6 of the RGPD that legitimizes them, are subject to a series of principles, including the principles of purpose limitation and data minimization.

Thus, according to the principle of purpose limitation, *"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 subsequent 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" (article 5.1.b)* RGPD).

And, according to the principle of data minimization, *"personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed"* (Article 5.1.c) RGPD).

In accordance with these principles, the City Council, as responsible for the processing, must analyze in each case what is the purpose for which the processing of personal data responds and whether the data that will be processed are adequate, relevant and not excessive in relation to that purpose.

This, in the context in which we find ourselves, leads us to take into consideration the provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC), as explained below .

IV

Article 14 of the LPAC provides, in relation to the right and obligation to relate electronically with public administrations, the following:

> *"1. Individuals may choose at any time whether to communicate with the Public Administrations for the exercise of their rights and obligations through electronic means or not, unless they are required to communicate through electronic means with the Public Administrations. The medium chosen by the person to communicate with the Public Administrations may be modified by that person at any time.*

2. In any case, the following subjects, at least, will be obliged to communicate through electronic means with the Public Administrations for the performance of any procedure of an administrative procedure:

(…)

e) The employees of the Public Administrations for the procedures and actions that they carry out with them due to their condition as a public employee, in the way that is determined by regulation by each Administration."

For its part, article 41.1 of the LPAC provides that " *notifications will preferably be made by electronic means and, in any case, when the interested party is obliged to receive them by this means. (…)".*

With regard to the documentation that accompanies the consultation (some emails in which the employee mentions *"notifications that have been given to me for my duties within the City Council"* and *"notifications informing me that I have been designated as responsible for works contracts"*), everything seems to indicate that in the present case we would be faced with the assumption of article 14.2.e) of the LPAC, in such a way that the municipal worker would be obliged to relate -se with the City Council through electronic means. In turn, the City Council would be obliged to practice the notifications through electronic means (article 41.1 LPAC).

Article 40.2 of the LPAC regulates the content of the notification, while establishing that *"it must contain the full text of the resolution, with an indication of whether or not it puts an end to the administrative process, the expression of the resources that proceed, in in their case, administratively and judicially, the body before which they would have to appear and the time limit to interpose them, without prejudice to the fact that the interested parties can exercise, in their case, any other that they consider appropriate."*

As you can see, this article of the LPAC does not contain any reference to the address of the person concerned.

Beyond this, it is necessary to take into account what is established in article 41 of the LPAC, which regulates the general conditions for the practice of notifications, and specifically, for the purposes of interest, the following provisions:

"1. (…)

Regardless of the medium used, the notifications will be valid as long as they allow evidence of their sending or making available, of the reception or access by the interested party or their representative, of their dates and times, of the complete content, and of the reliable ***identity of the*** *sender and* ***recipient*** *thereof . Accreditation of the notification made will be incorporated into the file.*

(…)

Additionally, ***the interested party may identify an electronic device and/or an electronic email address*** *that will be used to send the notices regulated in this article, but not for the practice of notifications.*

(…)

3. In the proceedings initiated at the request of the interested party, the notification will be carried out by the medium designated for the purpose by that party. This notification will be electronic in cases where there is an obligation to relate in this way with the Administration.

(…)

6. Regardless of whether the notification is made on paper or by electronic means, the Public Administrations will send a notice to the electronic device and/or the email address of the interested party that they have communicated, informing them of the provision of a notification in the electronic headquarters of the corresponding Administration or Organism or in the unique authorized electronic address. Failure to comply with this notice will not prevent the notice from being considered fully valid.

(…)."

And it is also necessary to take into account what is established in article 43 of the LPAC, which establishes specific forecasts regarding the practice of notifications through electronic means.

Paragraph 1 of this article specifies that these notifications *"will be made by **appearing at the electronic headquarters** of the Acting Administration or Organism, through a **single authorized electronic address or through both systems** , as provided by each Administration or Organism. For the purposes provided for in this article, appearance at the electronic site means access by the interested party or his duly identified representative to the content of the notification".*

From the point of view of the principle of data minimization (article 5.1.c) RGPD), the joint reading of articles 41 and 43 of the LPAC, mentioned, shows that to carry out the practice of notifications by electronic means (purpose to which the treatment responds (Article 5.1.b) RGPD)) the personal data of the interested persons (or, where applicable, of their legal representative) which are strictly necessary for this purpose are the first and last names and the number of ID card, given that this information is what makes it possible to establish the unequivocal or reliable identity of the recipient of the communication (article 41.1 LPAC).

It also highlights that, apart from this identifying information , the City Council can also process the data relating to the e-mail address and/or mobile number of the interested person (or representative), when the latter has provided such contact information, solely for the purposes of sending you a notice informing you that a notification has been made available to you at the City Council's electronic headquarters or at the unique authorized electronic address (article 41.1 and 6 LPAC).

And that, in any case, it is not necessary to process the data relating to the home address of the interested person, given that, in these cases, the notification must be submitted to the electronic headquarters of the City Council or to the unique electronic address enabled, according to what has been planned, during the legally established period for the interested person to be able to access its content (article 43.1 LPAC).

The treatment of this data relating to the address would only be relevant in those cases in which the notification to the interested person must be done on paper (article 41

LPAC), given that in this case, and without prejudice to the fact that the notification is also made available to the interested person at the City Council's electronic headquarters so that they can access its content voluntarily (article 42.1 LPAC), it is necessary to carry out this at the home of the interested person, as is apparent from the article 42.2 of the LPAC.

Therefore, and thus responding to the query formulated, it is necessary to bear in mind that the data relating to the address of the habitual residence of the working person (or of any interested person) must be recorded in the body of the notifications that must be sent to him practicing through electronic means would be contrary to the principle of data minimization (Article 5.1.c) RGPD), so it should not be included.

v

Taking into account the above considerations, by virtue of the principle of proactive responsibility (Article 5.2 RGPD), which requires the data controller to have a conscious, diligent and proactive attitude in relation to all personal data processing that it carries out, the City Council should take appropriate measures to ensure that such processing does not take place.

In this sense, and taking into account that, as stated in your query, it has a program that by default incorporates the address relative to the home of the person interested in all the notifications that are generated through its document manager, it would be necessary modify or adapt this program so that this action does not occur.

It is one thing for the address of the people or residents of a City Council to be found in its archives and another for it to be incorporated into the notification management module or application, which, as we have seen, would not seem to comply with the principles in the field of data protection when the person concerned has chosen the electronic channel or it is imposed compulsorily.

Remember, at this point, the importance of taking data protection into account from the design and by default in the implementation of applications and information systems, as provided in article 25 of the RGPD:

> *"1. Taking into account the state of the art, the cost of the application and the nature, scope, context and purposes of the treatment, as well as the risks of varying probability and severity that the treatment entails for the rights and freedoms of natural persons, the responsible for the treatment will apply, both at the time of determining the means of treatment and at the time of the treatment itself, appropriate technical and organizational measures, such as pseudonymization, designed to effectively apply the principles of data protection, such as the minimization of data, and integrate the necessary guarantees in the treatment, in order to fulfill the requirements of this Regulation and protect the rights of those interested.*
>
> *2. The controller will apply the appropriate technical and organizational measures to ensure that, by default, only the personal data necessary for each of the specific purposes of the treatment are processed. This obligation will apply to the amount of personal data collected, the extent of its treatment, its*

retention period and its accessibility. Such measures will guarantee in particular that, by default, the personal data are not accessible, without the intervention of the person, to an indeterminate number of physical persons.

(...).”

Regarding those notifications that could have been made to the working person by electronic means with an indication of the address relative to their domicile that are contained in the corresponding municipal files, in relation to which it is requested to be deleted, given that the data would not result relevant for the purpose for which it was treated, it should be deleted (Article 17.1.a) RGPD), taking into account that the deletion does not necessarily equate to the erasure or destruction of personal information, but which must lead to its blocking, under the terms of article 32 of Organic Law 3/2018, of December 5, 2018, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD).

Specifically, article 32 of the LOPDGDD establishes the following:

"1. The person responsible for the treatment will be obliged to block the data when it proceeds to its rectification or deletion.

2. The blocking of the data consists in the identification and reservation of the same, adopting technical and organizational measures, to prevent its treatment, including its visualization, except for the provision of the data to judges and courts, the Ministry of Finance or the competent Public Administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the prescription period thereof. After that period, the data must be destroyed.

3. Blocked data may not be processed for any purpose other than that indicated in the previous section.

4. When for the fulfillment of this obligation, the configuration of the information system does not allow the blocking or an adaptation is required that involves a disproportionate effort, a secure copy of the information will be carried out so that there is digital evidence, or another naturaleza, which allows to prove the authenticity of the same, the date of the block and the non-manipulation of the data during the same.

(…).”

Considering that the disputed electronic notifications, as stated in the consultation, are accessible to certain public employees through the file manager, it would be necessary to adopt appropriate mechanisms that prevent the display of the address corresponding to the person's domicile worker in said notifications by these municipal employees (for example, if it is a document in pdf format , one option could be to use the "censorship" tool).

In addition to all this, it would also be necessary to take into account the conservation obligations in accordance with what is established in the corresponding document evaluation table or tables (TAD) that may be drawn up under the terms of Law 10/2001, of July 13, of files and documents.

With regard to the type of municipal files to which the notifications in question refer, the application of the TAD that may correspond to the specific case will determine the terms under which personal information must be kept, either by blocking it or even removing it.

Having said that, remember that the City Council, as responsible for the treatment, must always give an answer to any person (in the specific case the municipal worker) who exercises a right to delete data, in the terms of the article 17 of the RGPD, regardless of whether or not the requested deletion is appropriate.

Conclusions

The incorporation of the address relative to the domicile of the working person (and of any interested party) in the notifications that must be made through electronic means would be contrary to the principle of data minimization.

The City Council must take the appropriate measures to ensure that the program it uses to generate the notifications does not incorporate this personal data by default.

Given the employee's request for the deletion of the information in those electronic notifications that have already been made, the City Council should proceed with their blocking in the terms indicated in this opinion.

Barcelona, February 23, 2023