

Opinion in relation to the query made by a City Council regarding the publication on the Internet of acts of the Plenary and of the registers of inhabitants

A query formulated by a City Council is presented to the Catalan Data Protection Authority in which it raises doubts about the possibility of publishing different documentation on the municipal website, for public consultation.

According to the consultation, the doubt is basically generated regarding the dissemination of the acts of the old plenums, and regarding the dissemination of the municipal registers of inhabitants since 1857.

Having analyzed the consultation, in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, the following is ruled:

I

(...)

II

According to the consultation, a series of documents have been digitized by the municipal Archive Service and they want to upload them to the municipal website as an online consultation service.

The query adds that the documents that want to be uploaded so that they can be consulted in a general way are the following:

*"Newspaper Library (Magazine Title) 1929 to 1934
newspaper library (Magazine Title) (1934 – 1936)
parchments*

*Proceedings of the plenum: the first (not as a plenum but as a jury) are from 1548. Then from the middle of the 19th century onwards.
Municipal registers of inhabitants: since 1857."*

In relation to the dissemination of the two magazines mentioned, the consultation considers that there would be no problem in their dissemination, since they were documents for public dissemination. according to the information available on the City Council's website ([...](#)), both magazines are available on the municipal website, and were already the subject of dissemination at the time.

As for the scrolls of the Curia, the consultation explains that they were transferred by the owners to the Municipal Archives, giving authorization for their dissemination. According to

available information (...): *"The fund consists of a total of 650 scrolls, dating from the 12th century to the 17th century. This is documentation of a legal nature (...)."*

The consultation states that the doubt about dissemination on the municipal website is generated *"basically in the minutes of the old plenums and in the dissemination of the population registers"*, and adds that *"the minutes of the plenum contain data of a personal nature not particularly protected in the same way as in relation to the municipal registers of inhabitants. This data in the digitized documentation is not anonymized."* However, according to the consultation: *"Currently, the minutes of the municipal meetings are uploaded to the municipal website with personal data anonymized."*

The consultation adds that in the acts of the plenum that are to be posted on the web, *"personal data of acts debated in the plenum and also personal data of the debates in the plenum itself"* appear and, in relation to the population registers, the inquiry adds that there are no specific regulations that provide for their publication online.

Based on the consultation in these terms, we acknowledge that the data of natural persons are protected by Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), as well as by Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

According to article 4.1 of the RGPD, personal data are: *"all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person;*

According to article 4.2 of the RGPD, it is data processing, among others, "communication by transmission". Therefore, the publication or dissemination of personal data via the Internet (from the municipal website) is considered data processing for the purposes of the RGPD, subject to the principles and guarantees of the RGPD, and therefore it is necessary to examine the possibility of dissemination on the municipal website of the documents referred to in the query, from the perspective of data protection.

III

With regard to the two magazines mentioned, reference must be made to article 85.1 of the RGPD (in connection with recital 153 of the same RGPD), according to which:

"1. Member States shall reconcile by law the right to the protection of personal data under this Regulation with the right to freedom of expression and information, including treatment for journalistic purposes and academic, artistic or literary expression."

It should also be borne in mind that the dissemination of periodical publications of a cultural, informative or divulgative type would in principle be framed in the exercise of the fundamental rights to freedom of expression and the right to information (art. 20.1.a) id) CE).

Given the type of document in question (two periodical publications of general information) and the aforementioned regulatory forecasts, the time that has passed and taking into account that, as the consultation explains, in the past the magazines would already have been subject to disclosure as to such , it can be pointed out that, in principle, the data protection regulations would not be an obstacle for the dissemination through the municipal website of two periodicals.

This, without prejudice to the application of other regulations, such as, where applicable, the intellectual property regulations, to which we refer.

Having noted this, it is necessary to make a general consideration regarding much of the documentation referred to in the query, not only the magazines mentioned, but also the scrolls of the Curia (prior to the 17th century), as well as some proceedings of the plenary session (the first , from 1548, and some from the middle of the 19th century and the municipal registers of inhabitants, which according to the query would date from 1857 "onwards".

It should be noted, at the outset, that the data protection regulations do not apply to the protection of personal data of deceased persons (article 27 RGPD and article 2.2.b) LOPDGDD).

Therefore, with respect to the documents subject to consultation that incorporate personal information referring to deceased persons, it is necessary to start from the premise that the regulations for the protection of personal data (RGPD and LOPDGDD) would not prevent their dissemination through the City Council's website.

Having made this general consideration, and leaving aside the dissemination of informative magazines and the documents of the Curia, we refer below to the two types of documents about which the consultation raises the main doubt, that is, the dissemination of the acts of the Municipal Plenum, on the one hand, and of the municipal register of inhabitants, on the other, that contain data on living people.

IV

Dissemination on the municipal website of acts of the Municipal Plenum

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) 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."*

Law 19/2014, of December 29, 2014, on transparency, access to information and good governance (hereafter, LTC), aims to regulate and guarantee the transparency of public activity.

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). The mentioned article 2.b) LTC, defines "public information" as "the information prepared by the Administration and that which it has in its power 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".

Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

According to article 8.1 of the LTC, the public administration, in application of the principle of transparency, must make public the information relating to different issues, among others, to "*decisions and actions with a special legal relevance*" (section c)), or "*any matter of public interest, and the information that is requested more frequently through the exercise of the right of access to public information*" (section m)). Regarding actions of legal relevance, we refer to the provisions of article 10 LTC.

At this point it is necessary to take into account article 10.2 of Law 29/2010, of August 3, on the use of electronic media in the public sector of Catalonia (LUMESPC), according to which:

"2. Local entities must publish the minutes of plenary sessions in their electronic headquarters. In their publication, the principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy must be taken into account. For these purposes, personal data may be included without the consent of the person concerned, if it is data referring to acts debated in the plenary session of the corporation or provisions subject to publication in the corresponding official bulletin. In all other cases, without prejudice to the provisions of other laws, publication is only possible if the consent of the interested person is obtained or the data cannot, under any circumstances, be linked to the interested person himself."

Article 46 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), to which the consultation refers, also refers to this matter, provides the following:

"(...).

2. For the purposes of letters c) im) of article 8.1 of Law 19/2014, of December 29, the minutes of the plenary sessions of the local administrations must be published in full, as well as the agreements taken in the sessions of the rest of the collegiate bodies of local administrations, and the date, number and type of the session to which it belongs, ordinary, extraordinary or urgent, must be indicated, with prior adoption of the appropriate measures to ensure compliance with the rules on personal data protection.

3. *With regard to the **minutes of the plenary sessions of the local entity**, personal data may be included in the publication without the consent of the person concerned if it is data referring to minutes discussed in the full body of the corporation or provisions subject to publication in the corresponding official bulletin. In the rest of the cases, publication is only possible if the consent of the interested person is obtained or if the data cannot, under any circumstances, be linked to the interested person himself."*

Based on the transparency regulations, the minutes of the Plenary sessions of the municipal corporation must be published on the electronic site, but yes, with the limitations that may arise from the applicable regulations.

As this Authority has agreed on previous occasions (among others, in Opinions CNS 6/2011, or CNS 5/2013), article 10.2 LUMESPC not only introduces an authorization for the publication of the proceedings of the sessions of the municipal plenum, but establishes its mandatory publication. And with regard to the publication of the personal data contained therein, it expressly enables it if it is data referring to acts debated in the plenary session of the corporation or provisions subject to publication in official bulletins.

In the rest of the cases (such as, for example, questions, motions and interpellations that may have occurred in plenary but are not linked to an act or provision adopted in plenary), publication would only be possible if the consent of the interested person is counted or the data cannot, in any case, be linked to the interested person himself.

It should be noted that the same article 10.2 LUMESPC conditions the authorization for the publication of personal data with respect to the **"principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy."**

Therefore, it will be necessary to take into account the different rights and concurrent interests in order to be able to determine the legal adequacy of the disclosure of the personal data included in these acts.

From the perspective of data protection it cannot be otherwise, since the authorization for the publication of personal data cannot be understood as an absolute authorization for the communication of data, for the sole fact that a certain matter has been discussed in the municipal meeting on the occasion of the approval of an agreement or provision.

Consequently, in certain cases, it will not be possible to publish the minutes in their entirety, due to the requirements of the data protection regulations and the regulations for the protection of the right to honor and the right to privacy.

In this sense, the principle of minimization must be taken into account, according to which the processed data - in this case, disseminated on the web - must be adequate, relevant and limited to what is necessary for the purpose of the treatment (art. 5.1.c) RGPD).

As has been pointed out, in the minutes of a municipal meeting, taking into account local regulations, issues of a very diverse nature and affecting the rights and duties of citizens can be discussed - we cannot rule out that in said acts there are personal data of different categories, including categories specially protected for the purposes of data protection regulations (art. 9 RGPD).

For this reason, it is necessary for the City Council to analyze the specific content of each of them, to determine if they contain personal data of specially protected categories (art. 9 RGPD), or data affecting the privacy or honor of these people or others that require special protection.

In these cases, by application of the regulations studied, it will be necessary to have the consent of those affected as a legal basis enabling the treatment (art. 6.1.a) RGPD, and, where appropriate, art. 9.2.a) RGPD with regard to personal data of special categories), specifically, to be able to disseminate the proceedings through the municipal website.

Otherwise, the data must not, under any circumstances, be linked to the person concerned, that is to say, the duly anonymized information must be disseminated (art. 10.2 LUMESPC).

From the point of view of data protection, the information should be disseminated, if it does not have the consent of the affected persons, or other legitimate basis of those provided for in article 6.1 RGPD, with the prior anonymization of the data of these people (art. 10 LTC and 46.2 RLTC).

Regarding this, although the consultation explains that *"the minutes of the municipal meetings are currently posted on the municipal website with the anonymization of personal data"* - a solution that, a priori, could enable the dissemination of the information subject to consultation -, it must be agreed that anonymization can be an appropriate mechanism, as long as it effectively ensures that the affected people are no longer identifiable, either directly or indirectly through other information contained in the information that would be disseminated by the 'Town hall.

Regarding this, according to recital 26 of the RGPD: *"(...) the principles of data protection must not be applied to anonymous information, that is to say information that is not related to an identified or identifiable natural person, nor to the data converted to anonymity so that the interested party is not identifiable, or ceases to be so. Consequently, this Regulation does not affect the treatment of said anonymous information, (...)."*

In the same vein, article 70.6.a) of the RLTC, according to which it is understood by:

"a) anonymization : the elimination of the personal data of the natural persons affected contained in the information and any other information that may allow them to be identified directly or indirectly without disproportionate efforts, without prejudice to being able to maintain, where appropriate, the data merely identifying the positions or personnel in the service of the public administrations that dictate or intervene in the administrative act."

However, as we have explained, many of the acts referred to in the consultation would be of considerable antiquity. In this case, the provisions of article 36 of Law 10/2001, of July 13, on archives and documents) may come into play.

In relation to the legally established exclusions for the consultation of public documents (such as, in this case, the dissemination of documents on the City Council's website), according to article 36.1 of Law 10/2001, these remain without effect, in a general way *"after thirty years of the production of the document, unless specific legislation provides otherwise. If these are*

documents that contain personal data that may affect the security, honor, privacy or image of people, as a general rule, and unless specific legislation provides otherwise, they may be subject to public consultation with the consent of those affected or when twenty- five years have passed before their death or, if the date is not known, fifty years before the production of the document".

Therefore, in principle, with regard to Plenary proceedings that took place 30 years ago or more, it should be noted that, a priori, their content could be disseminated, as long as they do not contain personal data that could affect the rights of certain natural persons, since in this case either their consent or the passage of the terms indicated in article 36.1 itself, taking as reference the death of this person, would be required.

According to the consultation, *"the proceedings of the plenary session contain personal data not particularly protected (...)."*

However, in the case examined, it is unknown which specific personal data appear in the minutes of the City Council meetings and it cannot be verified that there is effectively no data that could affect security, honor, privacy or image of people.

Much of the personal data contained in the minutes of the plenary session could refer to identification data of the elected officials who participate in the plenary session of the corporation, or of public workers. There may also be data of natural persons affected by any of the agreements adopted there. If this data is of an identifying , professional or economic nature, among others, (data that identifies them as persons awarded contracts or subsidies, as persons included in a list of goods and rights affected by a forced expropriation, appointments of public positions, etc...).

It does not appear that this data can be classified under the category of intimate personal data or data that may affect the rights to security, honor or image of the affected persons (art. 36.1 Law 10/2001).

However, the proceedings of the plenary session could also contain sensitive personal information or deserving of special protection against widespread dissemination, such as, simply as an example, certain information about people in a vulnerable situation.

For the relevant purposes, in the event that in any of the many acts referred to in the query, with an antiquity of more than 30 years, there is intimate information or that affects the security, honor or image of people, then it could only be disseminated without the consent of those affected, once the period of 25 years has passed before the death of the affected person or, if this date is unknown, once the period of 50 years has passed since the production of the document (article 36.1 Law 10/2011).

v

Dissemination on the municipal website of the municipal registers of inhabitants

The City Council refers to registers of a very wide period of time (since 1857), without specifying the end date, although it cannot be ruled out that it refers to the current moment.

The consultation explains that the municipal population registers contain personal data that is not particularly protected, and that this data is not anonymized in the digitized documentation. The inquiry adds that there is no specific regulation that provides for the online publication of the registers.

At the outset, again taking into account the wide time period to which the query refers, we recall the non-application of the data protection regulations to the information of dead persons, therefore, these regulations would not prevent the dissemination of "information from the oldest registers.

Having said that, we add that the first additional provision, section two, of the LTC, establishes that *"access to public information in matters that have established a special access regime is regulated by their specific regulations and, with additional, by this law."* It is necessary to refer at the outset, for the purposes of the possible legal basis for disseminating data from the population registers on the City Council's website (art. 6.1 RGD), to the regulations governing municipal population registers, specifically, Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL) and Legislative Decree 2/2003, of April 28, which approves the revised text of the Municipal Law and of the local regime of Catalonia (TRLMRLC), regarding the regime of access to the municipal register.

According to article 16.1 of the LRBRL: *"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. (...)"*

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).

Regarding access to the data contained in the Register, article 16.3 of the LRBRL provides the following:

*"3. The Municipal Register data **will be transferred to other public administrations** that request it without prior consent of the affected person only when they are necessary for the exercise of their respective powers, and exclusively for matters in which the residence or the domicile are relevant data. They can also be used **to prepare official statistics subject to statistical secrecy**, in the terms provided for in Law 12/1989, of May 9, of the Public Statistics Function and in the statistics laws of the autonomous communities with competence in the matter."*

For its part, article 40 of the TRLMRLC provides:

*"40.2 **The data contained in the municipal register are confidential.** Access to this data is governed by the rules governing citizens' administrative access to archives and public records and by Law 5/2002, of April 19, of the Catalan Data Protection Agency."*

*40.3 Without prejudice to the provisions of section 2 and without requiring the consent of the person concerned, the data of the register **may be communicated** to other public administrations that request it, when they are necessary to exercise the respective powers, and exclusively for the matters in which it is relevant to know the residence or address."*

According to the applicable regulations, the register serves very specific purposes, and its treatment - if applicable, its communication - must necessarily respond to the fulfillment of these purposes.

In this sense, from the perspective of data protection regulations, it is necessary to highlight the principle of purpose limitation, according to which the data must be collected for specific, explicit and legitimate purposes, and must not be processed subsequently in a manner incompatible with these purposes (art. 5.1.b) RGPD). The same article 5.1.b) adds that: *"According to article 89, paragraph 1, the further processing of personal data for **archival purposes in public interest**, scientific and historical research purposes or **statistical purposes** will not be considered incompatible with the initial ends."*

However, in the case at hand it does not seem that it can be maintained that the purpose for which the data is to be used can be qualified as statistical, archival in the public interest, or, in general, scientific.

On the other hand, although the regulations provide for the possibility of public administrations disseminating public information in a reusable format, that is to say, that "open data" can be shared, this cannot be done against what is established in the regulations of protection of personal data.

According to article 5.1 LTC: *" 1. Obligated subjects must adopt the necessary measures to facilitate people's knowledge of public information. The information subject to the transparency regime must be made public in the electronic offices and websites of the obliged subjects, in a clear, structured way and in a reusable format."*

Article 6.1 LTC provides, among others, as an obligation of transparency: *" e) Facilitate the consultation of information with the use of computer media in easily understandable formats that allow interoperability and reuse."*

Articles 16 and 17 of the LTC, to which we refer, establish the regime for the reuse of public information, which are specified in articles 74 and 75 of the RLTC.

For its part, Law 37/2007, of November 16, on the reuse of public sector information, establishes that: *"The reuse of documents containing personal data will be governed by the provisions of the Organic Law 3/ 2018, of December 5, Protection of Personal Data and guarantee of digital rights."* (art. 4.6 Law 37/2007).

As this Authority has agreed in different opinions and reports (for example, IAI 43/2021; CNS 5/2022, CNS 24/2021, among many others) lawful communications of register data can certainly occur municipality of inhabitants for the fulfillment of the purposes provided for in the regulations (LRBRL), either to other public administrations in relation to the fulfillment of their functions (art. 6.1.e) RGPD), or when the treatment is necessary for the fulfillment of a

legal obligation on the part of the person in charge (art. 6.1.c) RGPD), such as the right to information of councilors provided for in the regulations (*ex. art.* 164 TRLMRLC).

As this Authority has also agreed, in certain cases the communication of data from the municipal register could be authorized, when the treatment is necessary to satisfy the legitimate interests of the person in charge or of a third party, as long as these rights do not prevail the interests or rights and freedoms of the interested party (art. 6.1.f) RGPD). On this, we refer to Opinion 24/2021, or reports IAI 55/2019, or IAI 13/2021, among others.

However, these circumstances do not apply in the case at hand, insofar as it would be a generalized diffusion. Therefore, given the principle of purpose limitation (art. 5.1.b) RGPD), and given the regime of access to register data established by the applicable regulations (LBRL and TRLMRLC), the information from municipal registers that includes information of living persons should be anonymized beforehand (e.g. through aggregation) so that it should not allow the identification of specific natural persons.

The dissemination of anonymized information would not be subject to the principles of data protection (recital 26 RGPD).

For all that has been said, it must be concluded that there is no, given the applicable regulations, and as the consultation itself points out, a legal basis that allows the information contained in the registers to be disseminated on the City Council's website, with a general scope municipalities of inhabitants.

conclusion

Personal data protection regulations do not prevent the dissemination of information relating to deceased persons.

The minutes of the plenary sessions, with regard to the minutes debated, must be published on the electronic headquarters of the City Council without including categories of data that are specially protected, or that affect honor or privacy or that require a special protection. In this case, it would be necessary to have the consent of those affected to be able to disseminate the acts, or to disseminate the anonymized information. Once 30 years have passed, the provisions of article 36 of Law 10/2001 may come into play.

There is no legal basis that enables the dissemination, with a general scope, of the information contained in the municipal population registers on the City Council's website. This, without prejudice to the dissemination of anonymized information from the register, so that the affected persons are not identified directly or indirectly.

Barcelona, December 2, 2022