

## Opinion in relation to the query made by the City Council on whether it is possible to provide data from the Municipal Register to a councillor.

A letter from a City Council is presented to the Catalan Data Protection Authority in which, before handing over the requested information to a councillor, it is considered whether it is relevant, in accordance with the data protection regulations, facilitate access to the Municipal Register data to a councilor so that his municipal group can set up its electoral program in relation to the tax ordinances and carry out the relevant calculations. If this is the case, consider whether you can be given all the data you request (with indication of first and last names, address, population center, nationality, age, date of birth and sex) and in Excel format.

Having analyzed the query, which is not accompanied by any document, and given the current applicable regulations, and given the report of this Legal Advice, I issue the following report.

I

(...)

II

The City Council states in the consultation that an opposition councilor is asking it to provide the following information: " *access to data from the Municipal Register in Excel format , including first and last names, address, population center, nationality, age , date of birth and sex, in order to make calculations in relation to the tax ordinances*". Subsequently, he specifies that the councilor has stated that he needs this data " *so that the municipal group can set up its electoral program in relation to the tax ordinances and carry out the relevant calculations*".

On the occasion of this request, the City Council consults:

*"1. If it is pertinent to estimate the request for access to the data of the Municipal Register by the councilor taking into account the facts presented and the aforementioned claim.*

*2. in case they consider it relevant: i) if it is necessary to give him access to all the data he requests. ii) if the information can be provided in excel format , as requested."*

In this sense, the data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, apply to the treatments that are carried out on any information " *on 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".*

Article 4.2) of the RGPD considers " *treatment*": *any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction.*

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment " *is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment*".

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 (LOPDGDD), the processing of data can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

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, body or entity of in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile the public's access to official documents with the right to the protection of personal data under this Regulation.*

The regulation and guarantee of public access to official documents held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (henceforth, LTC), which recognizes people's right of access to public information, understood as such " *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*" (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

The first additional provision of the LTC, in the second section, provides that " *access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law*"

In the case we are dealing with, the City Council states that the person requesting the information holds the status of a councillor, which means that the provisions established by the local regime legislation are applicable, fundamentally, Law 7 /1985, of April 2, regulating the bases of the local regime (hereafter, the 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 (hereinafter, TRLMRLC), with regard to councillors' access to municipal information.

### III

In principle, it should be noted that this Authority has previously had the opportunity to analyze the right of access of councilors to the information available to their corporation, necessary for the exercise of the functions that correspond to them, regardless of whether they are in the government team or in the opposition (among others, in opinions CNS 10/2017, CNS 29/2018 or CNS 2/2021, as well as in reports IAI 48/2019, IAI 52/2019, IAI 27/2021 or IAI 36/2021, available on the website <https://apdcat.gencat.cat>).

In this sense, article 77.1 of the LRBRL establishes:

*"All members of the local Corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information available to the Corporation's services and which are necessary for the development of its function".*

For its part, article 164.1 of the TRLMRLC provides for the following:

*"All members of local corporations have the right to obtain from the mayor or mayoress or the president, or from the governing commission, all the background, data or information that is in the possession of the services of the corporation and they are necessary for the development of their function. (...)"*.

In the same sense, the Municipal Organic Regulation of the City Council, published in the BOPT on May 26, 2016, modified and published on April 7, 2017, May 30, 2017 and July 19, 2019, regulates the right to information of municipal councilors in article 61:

*"1. All councilors have the right to receive the information necessary for the exercise of their duties, and to access administrative files, records or other municipal documentation.*

*2. Consequently, it is the obligation of the municipal government bodies to provide councilors with the information mentioned in the previous section, and to answer for this duty before the Municipal Plenum."*

The local regime legislation does not require councilors to, in order to access municipal information, explain or justify the purpose of their request, given that the reason for their request must be understood as implicit in the 'exercise of their functions that correspond to them as councilors (among others, STS of November 5, 1999).

However, it must be borne in mind that although the right of access of the members of the local corporations operates on all the background, data and information that are in the possession of the services of the corporation, these must be necessary for the development of their function. Therefore, it is relevant to assess whether the information to which the councilor intends to access is necessary for the performance of his functions.

On the other hand, it should also be borne in mind that the councilors' right to information is not an absolute right. If it conflicts with other rights, it is necessary to weigh the different rights at stake, in order to decide which one should prevail and to what extent.

Therefore, it is necessary to examine the circumstances that come together in the particular case taking into account the intended purpose, if this information is necessary to achieve said purpose, the possible people affected and if it requires special protection.

#### IV

Having said that, the councilor requests " access to the *Municipal Register data in Excel format , including names and surnames, address, population center, nationality, age, date of birth and sex, in order to make calculations in relation to to the fiscal ordinances*". In this sense, article 16.1 of the LRBRL 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. (...)"*.

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 to acquire the status of resident and serve to prove residence and usual address (articles 15 and 16 LRBRL).

These purposes are clearly included in Sentence 17/2013, of January 31, of the Constitutional Court, where the Municipal Register is defined as:

*"The administrative register in which the residents of a municipality are recorded, a register managed by the City Councils themselves by computerized means (art. 17.1 LBRL) in which the persons residing in a municipality must be registered with a triple purpose, according to the arts. 15 and 16 LBRL, determine the population of the municipality, acquire the status of neighbor and accredit residence and usual address. In addition to these functions, the electoral regime legislation provides for the preparation of the electoral census based on the data contained in the Register, which also serves to prepare official statistics subject to statistical secrecy. So, from the regulation of the LBRL itself we can conclude that the register contains an organized set of personal data referring to identified physical persons, the residents of a municipality, being therefore a personal data file to which the regulations provided for in the LOPD."*

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

*"The data of the Municipal Register 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:

"(...)

*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.*

*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."*

Based on these forecasts, this Authority considers (among others, CNS 19/2019, CNS 20/2019, CNS 2/2020, CNS 6/2020 or CNS 32/2020) that, given that the regime legislation itself local accepts 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 the residence or domicile are relevant data - possibility also guaranteed by the Constitutional Court (STC 17/2013, of January 31)-, 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.

Specifically, we have referred to 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, articles 66 and 67 of the TRLMRLC), considering that the data of the Register would be processed for purposes that are compatible with that of the Register (article 5.1.b) RGPD).

In this sense, it is also necessary to admit that the councilors, as an integral part of the city council (article 19.1 LRBRL), must be able to access the data of the municipal register whenever access to this data is necessary for the exercise of their functions.

In addition, it should be remembered that the local regime legislation does not require elected officials that, in order to access the information held by the corporation, they must explain or substantiate the purpose of their request, given that the reason for their request must be understood as implicit in the exercise of said control and inspection functions.

However, from the point of view of data protection, and for the purposes of weighing the interests at stake and not communicating data that is unnecessary or excessive, it is advisable that councilors, when making the request for access to the information that contains personal data, specify the purpose for which they are requesting this access and/or the terms of their request.

In the case we are dealing with, the City Council explains to the consultation that the councilor of the opposition *he* wants this data *"in order to make calculations in relation to the tax ordinances"* and later, in a conversation with the General Secretary of the Corporation in order to clarify the purpose of the access, the councilor -according to the City Council- *" expressly states that the data from the Register is required so that the municipal group can configure its electoral program in relation to the tax ordinances and perform the relevant calculations."*

This question is relevant, given that the query refers to the request for information made directly by a councilor but with the purpose of providing it to his municipal group in order to configure the electoral program.

The recognition of the right of access to information is for all members of the local Corporation, therefore, regardless of whether they are in the government team or in the opposition.

On the other hand, article 77.1 of the LRBRL reviewed above, mentions "members of local Corporations" as holders of this right of access. Thus, according to this article, the right of access to information corresponds to councilors, and not to the Municipal Group. The councilors' right of access to municipal information is justified by the performance of the functions attributed to them based on the provisions of the applicable regulations. On the contrary, this right of access could not be exercised independently of the functions assigned to councilors as an integral part of the council.

v

Having made the previous general considerations, in the consultation it is specified that the councilor requests the information to *"make calculations in relation to the tax ordinances"*. In this case, first of all, if it appears that it can be referred to information about municipal taxes, it is more true that the purpose thus exposed is unclear and too generic, moreover, with regard to the personal data that requests, it is necessary to emphasize the fact that indiscriminate access to all the personal data requested, which can seriously affect the privacy of the people affected, is not justified.

In this sense, as has already been pointed out, councilors are assigned control functions of the activities of the City Council, of its own government and of the municipality's administration, derived from the provisions of the regulations (LRBRL). These regulations provide that the plenary, made up of all the councilors together with the mayor, is responsible, among others, for the control and supervision of the governing bodies; also the determination of own resources of a tax nature, the approval and modification of budgets, and the disposition of expenses in matters of their competence and the approval of accounts, these last issues, in accordance with the provisions of the Regulatory Law of the Local Treasury.

However, in the case at hand, it must be remembered that as stated in the consultation, the purpose of the exercise is not the exercise of these powers, or their control, but *"that the data of the Register so that the municipal group can configure its electoral program in relation to the tax ordinances and perform the relevant calculations"*.

Considering that an electoral program is the program with which a political party or a candidate in particular he is running for an election and where he declares his ideology, values, proposals and plans for political or government action, in case of winning the election and is running with the aim of appealing to the general public during the campaign election and thus obtain their support and votes, it can be deduced that the purpose of the access requested by the councilor is to obtain data to be able to subsequently elaborate political proposals. It would therefore not be linked to the exercise of the functions that correspond to him as a councilor but to the exercise of the electoral campaign activity that can be freely carried out by political parties, coalitions or groups of voters who want to participate in a

process electoral In this sense, there are reasons to consider that access to information is contrary to the principle of purpose, since we are dealing with information that we want to obtain with the purpose of drawing up an electoral program, which goes beyond the which is the development of said functions that may be attributed to councilors, to which we have already referred.

Without ruling out, therefore, that in certain cases councilors may legitimately access data contained in the Municipal Register in the exercise of their control functions or others that the regulations may grant them, and taking into account the information that is provided in this case, it does not seem that access to configure your electoral program should be considered included in the legitimate purpose for which a councilor can access the Register for the purposes of what is provided in article 5.1.b) of the RGPD (fulfilment of the functions attributed to councilors by current regulations, in this case).

Consequently, in this context, by not meeting a purpose that is part of the exercise of the functions of the councilor that allows access by the councilor to data from the municipal register, access to this information would require the consent of the holders of the data.

In accordance with the considerations made in this opinion in relation to the query raised, the following is made

## **conclusion**

The councilors' access to personal data included in the Municipal Register of Inhabitants may be enabled when, taking into account the specific purposes of the Register, access is necessary and provided for the development of the control functions of the activities of the municipal corporation, or other functions that may be attributed to the councilor, in the terms provided for in the LRBRL.

The councilor's access to the Municipal Register of Inhabitants to configure the electoral program of the municipal group in relation to the fiscal ordinances is not justified, to carry out the relevant calculations, identifying the people who are registered there.

Barcelona, December 16, 2022