

**Opinion in relation to the consultation on the anonymization or not of the name and surname of the person General Secretary of a local entity that takes part in the signing of an administrative agreement that is addressed to the Register of Collaboration and Cooperation Agreements of the Generalitat.**

A query is submitted to the Catalan Data Protection Authority regarding the anonymization or not of the name and surname of the General Secretary of a local entity that participates in the signing of an administrative agreement addressed to the Registry of Collaboration and Cooperation Agreements of the Generalitat.

In view of the requests from the Registry of Collaboration and Cooperation Agreements of the Generalitat of Catalonia regarding the need to anonymize the agreements submitted for their publicity regarding the name and surname of the general secretary of the signatory local entities , the DPD of us issued a report that accompanies the request for opinion.

The conclusions of the report on which the pronouncement of this Authority is requested, are the following:

*"Incorporating the name, surname and position of the person who acts as Secretary General of a local entity in the active advertising of an administrative agreement is mandatory, and meets, reconciles and appropriately weighs the requirements of the blogs regulatory regulations of the Local Regime, Transparency and Personal Data Protection, since this person (Secretary), together with the person holding the competent body (Elected Authority), is an imperative and inalienable part of the concept "persons who act in representation of the signatory parties" and the publication of their first and last name data must not be anonymized, as it is merely identifying data of people who have intervened in an administrative agreement due to their public functions, and what anonymization would prevent the public from knowing the identity of the people who, integrated in a public organization subject to the Transparency Law, have intervened in the preparation and formalization of an administrative agreement and are necessary for its validity and effectiveness, in addition to determining the regularity of its issuance. That citizens can identify the person who, in the exercise of their public functions, has intervened in an agreement, is relevant for the citizen to be able to know what the administration does, how it does it, who does it and on what basis does.*

*These purely identifying personal data form an inseparable part of the public information itself and must be included in the agreements of the local entities that are published in the Register of Collaboration and Cooperation Agreements."*

The consultation has been analysed, which is accompanied by the report issued in this regard by the DPD of the entity and the *Recommendations for the protection of personal data in the agreements and management orders that must be sent to the Register of Agreements and which will subsequently be published* , of the Registration Service of Collaboration and

Cooperation Agreements, in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, I issue the following opinion:

I

(...)

II

At the outset, the identification data (name and surname) and position of the secretary of a local body that are included in the agreement are personal data in accordance with article 4.1) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection Regulation (hereinafter, RGPD)), which establishes that all processing of personal data, understood as " *any operation or set of operations performed on data personal or data sets \_ personal , yes either by procedures automated or not, such as collection , registration, organization , structuring , conservation , adaptation or modification , extraction , consultation, use , communication by transmission , diffusion or any another form of enabling access , comparison or interconnection , limitation , suppression or destruction* " ( article 4.2 RGPD) it must be lawful, loyal and transparent in relation to the interested party (article 5.1.a)).

This Authority does not question the inclusion of the corporation secretary's data in the administrative agreements, given the provisions of the local regulations. Beyond that, and focusing on the consultation, that is, focusing on the publication of this data, it is worth remembering that in order for a treatment to be lawful it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD, including for the purposes of this report, those provided for in the following letters:

(...)

*c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment ;*

(...)

*e) the processing is necessary for the fulfillment of a mission made in interest public or in the exercise of powers public conferred on the data controller ;*

(...)"

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of the LOPDGDD, data processing can only be considered based on the legal bases of article 6.1.c) and 6.1e ) of the RGPD when so established by a rule with the rank of law.

Now, according to article 86 of the GDPR: "*The data personal documents of official documents in the possession of any public authority or body public or a private entity to carry out a mission in the interest public may be communicated by said authority , body or entity in accordance with the Law of the Union or of the States members that apply to them in order to reconcile public access to official documents with the right to data protection personal under this Regulation .* "

In the case of the treatment that is the subject of the query (publication of information that contains personal data for the purposes of active advertising), Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC).

As stated in the statement of reasons for the LTC *"The regulation of transparency in public activity is one of the basic pillars of the Law. This regulation understands transparency as an obligation borne by the Administration, which must provide proactively - that is, without the need for express demand - information on data and content of various natures that are referential with respect to its organization, operation, making the most important decisions and the management of public resources. In this way, the mandate of article 71.4 of the Statute of Autonomy is fulfilled, which obliges the Administration of the Generalitat to make public the necessary information so that citizens can evaluate its management."*

Thus, the LTC *"determines in a very broad way the various contents of the transparency obligation (institutional and organizational information, economic and budgetary management, information of legal relevance, programming and planning, public procurement, subsidized activity, etc.), and the rules to which it remains subject, especially those that must guarantee its easy access, consultation and understanding, its neutrality, its updating, as well as the limits that derive from the protection of other rights"*.

In any case, as established in article 7 of the LTC, the obligations of active advertising are subject to the same limits that the LTC establishes regarding access to public information (articles 20 and following), especially those relating to the protection of personal data. Specifically, article 7.1 establishes:

*"The limits applicable to transparency obligations are the same as those established by title III for the right of access to public information, especially those relating to the protection of personal data."*

Subjects bound by the transparency regulations must apply the limits regulated by articles 20 et seq. of the LTC in the information they make public, and especially those derived from the data protection regulations. In active advertising, the principle of minimization, contained in article 5.1.c) RGPD, must be taken into account, according to which the data must be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed.

In short, the obliged subjects must ensure that the mandate of the transparency legislation is fulfilled and at the same time that only the personal data that is strictly necessary to achieve the intended purpose is disseminated.

### III

Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia regulates collaboration agreements as *"any agreement subject to public law, from which direct legal obligations for the parts, regardless of the denomination of the instrument that contains it"* (article 108).

Regarding the content of the agreements, article 110 of the same Law 26/2010 provides:

*"1. The agreements, if applicable, must contain the following aspects:*

*a) The administrations and bodies that sign the agreement and the legal capacity with which each party acts .*

*b) The jurisdiction under which each party acts .*

*c) The express reference to the approval by the Parliament or by the General Courts or to the agreement of the Government of the Generalitat or of the plenum of the local entity or of the governing body that authorizes the agreement in the cases in which they are prescriptive*

*d) The object of the agreement and the actions agreed to be carried out to comply with it.*

*e) Financing, if the object of the agreement requires it, with an indication of the budget items that authorize the expenditure.*

*f) The commitments assumed by the parties .*

*g) The term of validity of the agreement and, if applicable, the extension regime. If the agreement entails financial expenditure commitments, the extensions must be expressed. (...)"*

*3. The agreements and protocols must be published in the Official Journal of the Generalitat of Catalonia and on the website of the Registry of collaboration and cooperation agreements of the Generalitat, which is accessible from the Transparency Portal."*

In the same sense, article 49 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector, establishes that the agreements must contain, among other aspects, the "*Subjects who subscribe to the agreement and the legal capacity with which each of the parties acts* ."

In accordance with the aforementioned legal regulations, the parties to a collaboration agreement are the administrations, bodies or subjects that sign them and that have the legal capacity to assume the commitments agreed through that legal instrument .

At the local level, it is also necessary to take into account, as the local entity explains, that Royal Decree 128/2018, of March 16, which regulates the legal regime of Local Administration officials with qualification national law (RD 128/2018), provides in its article 3.2.i) that the function of public faith of the secretarial person specifically includes, among other functions, acting as public notary in the formalization of all contracts, agreements and similar documents in which the Local Entity intervenes.

With regard to active advertising in the field of collaboration agreements, article 14 of the LTC establishes, what is the minimum information that the subjects obliged by the transparency regulations must make public, in the following terms :

*"1. Transparency in the field of collaboration agreements is applicable to all agreements and management tasks signed between the obliged subjects and private and public persons.*

2. Public information relating to collaboration agreements must include, at least :

a) *The list of current agreements, with an indication of the date, the parties that sign them, the object, the rights and obligations of any kind that they generate and the period of validity.*

b) *Any changes to any of the parameters referred to in letter a, and the date and manner in which they occurred.*

c) *The information relating to the compliance and execution of the agreements.*

3. The advertising obligations established by this article must be made effective by means of the Registry of collaboration and cooperation agreements of the Generalitat, which must be integrated into the Transparency Portal."

It follows from this article that it is necessary to make public, among other information, and for the purposes that are now of interest, the parties that sign the agreement.

These forecasts have been the object of development in article 44.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereafter RLTC), which establishes:

1. *For the purposes of letters a) ib) of article 14.2 of Law 19/2014, of December 29, a list of current agreements and their eventual modifications must be published, which must include a link to the text of the signed agreement or its modification, after anonymization of the personal data other than the identification with first and last names of the signatories, through the Register of Agreements. A link to the official publication in the Official Journal of the Generalitat of Catalonia must also be published, if applicable.*  
(...)

In addition, article 44.1 of the RLTC, establishes

*To comply with the obligations of active transparency provided for in Chapter III of Title II of the Law, the private entities referred to in the previous article must publish the following information:*  
(...)

b) *The list of agreements signed with public administrations in the last five years, which includes the date of signature, the signatory parties, the object, the rights and obligations they generate and the period of validity, as well as any modifications of any of these data and the date and form in which the modifications have taken place, and the information that, in accordance with article 44.2 of this decree, refers to the fulfillment and execution of the agreements.*  
(...)

In accordance with the transcribed articles, a list of current agreements and their modifications must be published, where certain information must be included, but this information does not include that relating to the identity of the secretary of the corporation

that must intervene for purposes of public faith. Only the identification of the signing parties is required.

It is true that Article 44.1 of the RLTC refers to “ *the signatories* ”, but this cannot be understood contrary to what is clear from the LTC that Article 14.2.a) clearly refers to to “ *the parties that sign them*”. Therefore, the signatories are those who represent the entities that subscribe to the agreement.

In the same sense, article 110 of Law 26/2010, which provides for the publication of the agreement, identifies as personal data included in the agreement (and therefore subject to publication) the bodies that sign the agreement and the legal capacity with the one acted by each party (art. 110.1.a)).

Therefore, it is the same LTC and Law 26/2010 that establish the content that must be disseminated, limiting it, in terms of personal data, to information about “*the parties that sign them*” or “*the bodies that subscribe to the agreement and the legal capacity with which it acts*”, which, for the purposes of article 5.1.c) of the RGPD, should cover only the identification of the people who act on behalf of the parts.

The general secretary of the municipal corporation, although he must act as a public notary in the formalization of contracts, agreements and similar documents in which the Local Entity intervenes, cannot be considered one of the parties that sign it, given that it does not, in accordance with the applicable legislation, have the legal capacity to assume, on behalf of the entity, the obligations arising from that act.

It is true, as pointed out in the query that the identification with first and last names and the position of the person who acts as secretary of the corporation when signing an agreement are data that must be considered as data merely identifiers related to the operation of the municipal administration, and which as such can have a fairly broad access regime (art. 24.1 LTC and 70.2 RLTC) when it comes to a request for access to public information .

On the other hand, it does not escape this Authority that in the case of the identification data of the person who holds the position of general secretary of a local entity, even though the corresponding anonymization is carried out , it cannot be ruled out that the its re-identification can be done without disproportionate efforts, due to the relevance of the position and because, in fact, this information may be contained in other publications.

But dealing with, in the case that arises in the consultation of compliance with an obligation of active advertising in which the law clearly establishes that the people who must be identified in the relationship and in the agreement that is published are simply the signatory parties to the agreement, it is not appropriate, in accordance with the principle of minimization (art. 5.1.c) RGPD), the publication of the name and surnames of other people involved in the signing of the agreement.

## **conclusion**

The transparency regulations establish the minimum content that must be disseminated with respect to collaboration agreements, limiting it, with regard to personal data, to information on the name and surname of the persons acting on behalf of the parties that sign them.

Barcelona, December 12, 2022