

**Opinion in relation to the query formulated by a town council
on the request by a councilor for data from the municipal register of inhabitants
in relation to the councilors of the government team.**

A query is presented to the Catalan Data Protection Authority by the mayor of a town hall regarding the request by a councilor for data from the population register in relation to the councilors of the team of government

Specifically, the consultation states that an opposition councilor is requesting:

*"1.- Additions and deregistrations from the municipal register during the year 2021 specifying: DNI or NIE, address and date of addition or deregistration .
2.- The certificate of cohabitation of the homes located in the municipality (...) and included in the declaration of assets of the councilors of the government team specifying: DNI or NIE, address and date of registration.
In neither case are the names of the people registered."*

In this regard, he raises the question of whether the councilor should be provided with the requested register information in relation to the councilors of the government team.

Having analyzed the consultation, which is accompanied by the request made by the councilor, in view of the current applicable regulations, in accordance with the report of the Legal Counsel, I issue the following opinion:

I

(...)

II

Article 4.1) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD)), defines personal data as *"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 "* (article 4.1) RGPD).

In the case raised in the consultation, the councilor's request specifies that in no case does she want access to the names and surnames of the registered persons, but requests with

respect to them, the DNI or NIE, address and date high or low According to the definition of the RGPD, the information requested is personal data subject to the RGPD regime.

The communication of these data is a contract of personal data, entities with " *any operation or set of operations made on data personal or data sets _ personal , yeah either by procedures automated or not, such as the collection , registration, organization , structuring , conservation , adaptation or modification , extraction , consultation, use , communication by transmission , dissemination or any another form of enabling access , comparison or interconnection , limitation , deletion or destruction* " (article 4.2 GDPR).

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, sections c) and i) provide 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* " and "*the treatment is necessary for the fulfillment of a mission made in interest public or in the exercise of powers public conferred on the person in charge of the treatment* ", respectively.

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 it can only be considered based on these legal bases of article 6.1.c) i) of the RGPD when so established by a rule with the rank of law.

Per la seva part, article 86 of the GDPR provides that "*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 .* "

The regulation and guarantee of public access to 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 (hereinafter, LTC), which recognizes individuals, in an individual capacity or in the name and representation of a legally constituted legal person, the 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).

For its part, 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, with supplementary character, by this law*".

In the case at hand, in which a councilor consults certain documentation contained in the Municipal Register of Inhabitants, the provisions established by the legislation of the local regime apply, fundamentally, 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 Consolidated Text of the Municipal and Local Regime Law of Catalonia (TRLMRLC).

III

This Authority has previously had the opportunity to analyze the councilors' right of access 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 the opinions CNS 29/2018 or CNS 2/2021, as well as in the reports IAI 48/2019, IAI 2/2019 or IAI 3/2020 available on the apdcat.cat website).

Article 77.1 of the LRBRL establishes that *" all members of the Corporations local have right to obtain from the Mayor or President or from the Government Commission how many background , data or information held by the services of the Corporation and are accurate for the development of its function "*.

In the same sense, the TRLMRLC pronounces itself, by providing, in its article 164.1, that *"all members of local corporations have the right to obtain (...) all the background, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."*

The right to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and necessary for the exercise of their functions, in accordance with repeated jurisprudence on this issue (SSTS September 27, 2002 , June 15, 2009, among others), is part of the fundamental right to political participation enshrined in article 23.1 of the Spanish Constitution, according to which *" citizens they have the right to participate in the affairs públicos , directly or through representatives , freely _ elected in elections periodic by universal suffrage . "*

It should be borne in mind that the elected officials participate in a public action that manifests itself in a wide range of specific matters, such as the right to audit the actions of the corporation, the control, analysis, study and information of the necessary antecedents , which have the services of the City Council, for their control task and to document themselves for the purposes of adopting decisions in the future (among others, STS of March 29, 2006).

However, this does not mean that this right of councilors is an absolute right. If it conflicts with other rights, it will be necessary to weigh the different rights at stake, in order to decide which should prevail and to what extent.

This has come to be recognized by the local regime legislation itself. The aforementioned article 164 of the TRLMRLC, in regulating the conditions for the exercise of the right of access to municipal information by the members of the corporations (sections 2 and 3), establishes, as a possible basis for denying the request with reasons 'information, that *"the knowledge or dissemination of the information could violate the constitutional right to honor, personal or family privacy or one's image"* (section 3, letter a)), but obviously access could also be denied -se when other fundamental rights may be affected such as the right to the protection of personal data (Article 18.4 EC).

Given that the exercise of the councilor's right of access could lead to a limitation of the fundamental right to the protection of personal data, it will be necessary to determine whether it is a proportional limitation, given that, according to repeated doctrine of the Constitutional Court, the limitation of fundamental rights can only occur proportionately (SSTC 11/1981, 57/1994, 66/1995, 11/2006, 206/2007, among others).

It is therefore necessary to examine the circumstances and terms of the request that the councilor has submitted to the City Council, the intended purpose, and whether this information is necessary to achieve said purpose or requires special protection.

IV

In her request, the councilor requests information related to the Municipal Register of Inhabitants, specifically *"- Additions and deletions from the municipal register during the year 2021 specifying: DNI or NIE, address and date of addition or deregistration. 2.- The certificate of coexistence of the homes located in the municipality (...) and included in the declaration of assets of the councilors of the government team specifying: DNI or NIE, address and date of registration"*.

Therefore, it is requested, on the one hand, the additions and deletions to the municipal register during the year 2021 and on the other the certificate of coexistence of the homes located in the municipality that correspond to those included in the declaration of assets of the councilors of the government team and with respect to these, the DNI or NIE, address and date of registration or deregistration are indicated.

Article 16.1 of the LRBRL defines the Municipal Register in the following terms:

"one. The municipal register is the administrative record where consist of the residents of a municipality . Their data constitute proof of residence in the municipality and habitual residence therein . The certifications that said data is issued will have character of a public and reliable document for all purposes administrative _ (...)".

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).

Point out that these purposes are clearly included in Sentence 17/2013, of January 31, of the Constitutional Court, which defines the Municipal Register as:

" Administrative record where the residents of a municipality are recorded , a record managed by the residents themselves Town halls by media computer (art. 17.1 LBRL) in which people must register residents in a municipality with a triple purpose , according to the arts. 15 and 16 LBRL, determine the population of the municipality , acquire the status of neighbor and prove the residence and habitual 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 They are also used to prepare

official statistics subject to statistical secrecy . So , from one's own regulation of the LBRLL we can conclude that the register contains an organized set of personal data referring to persons _ physical identified , the residents of a municipality , thus being a data file personal data to which the regulations provided for in the LOPD apply ."

The registration in the Municipal Register will contain the following data as mandatory: first and last name, sex, usual address, nationality, date and place of birth, number of the identity document (or, for foreigners, the residence card or number identity document), certificate or school or academic degree, and, finally, those data that may be necessary for the preparation of the electoral rolls, provided that fundamental rights are respected (article 16.2 LBRLL).

Article 17.1 of the LBRLL provides that " *the formation , maintenance , review and custody of the Municipal Register corresponds to the City Council , in accordance with what is established by State legislation . (...). "*

In relation to the issuance of registration certificates, article 61 of the Regulation of Population and Demarcation of Local Entities (RPDTEL), approved by Royal Decree 1690/1986, of July 11, establishes the following:

"The certifications referred to in article 53.1 of this Regulation will be issued by the Secretary of the Town Hall or official in whom delegate , in accordance with the provisions of articles 204 and 205 of the Regulation of Organization , Operation and Regime Legal of the Entities Premises , approved by Royal Decree 2568/1986, of November 28 . (...)"

Therefore, the Town Councils are in charge of managing the Municipal Register and of issuing or issuing the corresponding certificates for the purposes of accrediting the residence or usual address of the persons registered in an address.

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."

On the other hand, article 16.3 of the LBRLL provides the following:

"3. The data from the Municipal Register will be transferred to other Administrations public upon request without consent prior to the affected only when they are necessary for the exercise of their respective powers , and exclusively for matters in which the residence or domicile is data relevant . Too They can be used to prepare official statistics subject to statistical secrecy , in the terms provided in Law 12/1989, of May 9 , of the

Public Statistical Function and in the statistics laws of the communities autonomous authorities with competence in the matter .”

Based on these forecasts, this Authority considers (among others, CNS 9/2013, CNS 67/2015, CNS 46/2016, CNS 12/2017 or CNS 39/2018) 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, cited)-, with greater reason it can be admitted that the different units or administrative bodies of the same town hall can access these data when they are necessary for the exercise of their functions and when the residence or domicile data is relevant.

In line with this criterion, therefore, it can also be admitted that councilors, as an integral part of the town council (article 19.1 LRBRL), must be able to access the data of the Municipal Register whenever access to this data results necessary to carry out the functions of control and supervision of the performance of the governing bodies that the LRBRL expressly attributes to them (article 22.2.a)).

Access that, in accordance with the principle of data minimization (article 5.1.c) RGPD), (*"the data personal they will be adequate , relevant and limited to what is necessary in relation to the purposes for which they are processed "*), it will refer only to the personal data that are necessary to give a satisfactory answer to the legitimate right exercised by the councilors.

At this point, 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 justify 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.

In the case at hand, the councilor does not indicate other reasons that can be taken into consideration in the weighting of rights beyond the control and supervision of the actions of the governing bodies that is implicit in her performance as councilor. In this sense, the own need of the councilors of a municipal corporation to be properly informed in order to carry out their function of controlling the activity of the government team must be taken into consideration.

The control of the management of the Register, with the aim of verifying its evolution, can justify the councilor's access to certain information about the variations that have occurred in the municipal Register. However, for this purpose, and in accordance with the principle of minimization, it would be sufficient to facilitate a breakdown of the additions and deletions from the Register that occurred in the specified period in which it was indicated, for each addition and deletion, the date it occurred and the reason for it.

The applicant indicates that the name of the affected persons is not requested, but in any case, it requests the DNI or NIE number, the address and the date of registration or deregistration. That is to say, although the name and surname are not requested, the data relating to the address or the number. of DNI can easily identify the affected people.

Despite this, it must be said that for this purpose of controlling the evolution of the Register, it would be sufficient to facilitate the additions and deletions anonymously (consideration 26

RGPD) without indicating either the first and last name, or the number of DNI or the address of the registered persons, or any other data that allows the information to be linked to identified or identifiable persons. This option, which can include the dates of enrollment and termination, would already allow a first level of control over the evolution of the municipal register of inhabitants.

This would make it possible to respond, in these terms, to the first point of the request for information, insofar as the information included in the query made to this Authority did not include other elements that would allow a more accurate weighting to be made of the need for general access to the registration and deregistration data of the Municipal Register that may allow the identification of the affected persons. This identification could be justified, for example, in the event that it was wanted to verify that no irregularity or fraud is taking place in the management of this register in relation to certain registrations or cancellations.

In this sense, the second point of the request also asks for "*The certificate of coexistence of the homes located in the municipality (...) and included in the property declaration of the councilors of the government team where "specify: DNI or NIE, address and date of registration ."*

In this case it is no longer a request referring to the population as a whole that has experienced some change of registration or deregistration in the Register, but referring to a specific group such as the councilors who are part of the government team. This shows that what is intended to be done is a control, precisely of the situation of the members of the government team with regard to their registration in the municipal register.

It should be remembered that, in accordance with current regulations, the municipal register of inhabitants forms the basis of the electoral census (article 16 LBRL and articles 65 and 66 of the RPDTEL).

Although Organic Law 5/1985, of June 19, on the general electoral regime (LOREG) does not establish residence in the municipality as a requirement for eligibility in municipal elections, from the point of view of political control and transparency may be relevant to access this information.

To the extent that the personal data that will be the subject of communication refers to local elected officials, given the relevance of this information in relation to the transparency of the actions of public officials and their relationship with the municipality and, given the expectations of more limited privacy that people who hold public office may have, it would not be proportionate to limit access to this data, which allows knowledge of the link of an elected office with the municipality where he holds office. Now, in accordance with the principle of minimization, it seems sufficient to provide the name and surname of the councillors, without indicating their DNI or NIE number, or their address.

On the other hand, the delivery of the requested information regarding the cohabitation certificates of the councilors is not appropriate to the data protection regulations. The cohabitation certificates contain information on all the people registered in the same address (art. 8.1.1 of the Resolution of April 29, 2020, of the Undersecretariat, by which the Resolution of February 17, 2020 is published, of the Presidency of the National Institute of Statistics and of the General Directorate of Autonomous and Local Cooperation, for which technical instructions are given to the Town Councils on the management of the Municipal

Register). Therefore, with respect to the homes declared by the councilors who are part of the government team, the cohabitation certificates will contain information not only of the councilor but also of third parties registered in that address. Providing this information entails a serious interference in the right to data protection of these people that would not be justified by the purpose of the access.

Therefore, it can be concluded that in the case we are dealing with, in which beyond the control of the municipal action, no other reasons have been presented when formulating the consultation that could justify an interference in aspects of the privacy of the positions elected officials and the people they live with that affect their personal lives in a more intense way, it is not considered appropriate to the data protection regulations to facilitate access to the cohabitation certificates required by the municipal councilor.

conclusion

The data protection regulations do not prevent the councilor's access to information on the registrations and deregistrations of the Register that occurred in the specified period, including the date of registration or deregistration, without, in view of what is set out in the query, it is justified to include the name and surname, or the ID number or the address of the registered persons, or any other data that allows the information to be linked to identified or identifiable persons.

As for the councilors of the government team, they can be identified with their first and last names indicating the date on which they were appointed or dismissed, but it would not be in line with data protection regulations to provide 'access to coexistence certificates.

Barcelona, January 20, 2022