apdcat
Autoritat Catalana de Protecció de Dades

# Opinion in relation to the query made by a City Council on the publication of the Plenary proceedings, following the right to delete personal data exercised by a former councillor.

## Background

A City Council consultation on the criteria for publishing the Plenary proceedings is presented to the Catalan Data Protection Authority.

Specifically, the City Council states that a former councilor is requesting the deletion of his personal data from the minutes of the City Council meeting and a municipal magazine published on the City Council's website.

As a result of this request, the City Council raises three questions: the first, whether this person, as a former councillor, can request the deletion/opposition of their personal data in the proceedings of the plenary session, where she has intervened as a councillor; the second, for how long it is recommended to keep the full minutes of the plenary session published at the municipal headquarters/transparency portal and, the third, in the event that a request for access to public information from one of these is submitted plenary proceedings, if the applicant's data must be anonymised.

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.



## Legal Foundations

### I

In accordance with article 5.o) of Law 32/2010, of October 1, of the Catalan Data Protection Authority, it is up to the Authority to provide information on the rights of people in matter of personal data processing, as well as answering the queries formulated by the entities in its scope of action on the protection of personal data held by public administrations.

Article 8.o) of Law 32/2010, of October 1, states that it is the role of the Director of the Authority to respond to inquiries made by the administrations, which must be completed by medium of the body that has its representation. Consequently, this report is issued based on the aforementioned provisions of articles 5 and 8 of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

## II

In the request for a report, the City Council states that a former councilor requests the deletion of his personal data from the minutes of the City Council meeting and a municipal magazine that are published on the City Council's website .

On the occasion of this request, the City Council raises three questions, the first, to what extent a former councilor can request the right to delete/oppose her personal data in the minutes of the plenary session, where she intervenes as councilor; the second, for how long it is recommended to keep the full minutes of the plenary session published at the municipal headquarters/transparency portal, and, the third, if a request for access to public information of one of these minutes is submitted full, the personal data of the former councilor should or should not be anonymised.

The City Council accompanies the legal report of the Corporation, which includes three links to the City Council website where they appear: a Plenary meeting from 2000, another from 2003 and a municipal magazine from the year 2004 .

It is necessary to make an indent, regarding the publication of personal data in a municipal magazine. Thus, although it is not stated in the consultation formulated by the City Council, in the accompanying legal report, in point two, it states that " *the documents in which the applicant's identifying data are located, are full minutes (. ..) and the municipal magazine Viure."* And, one of the three links it includes corresponds to a copy of the Viure municipal magazine published in June 2004.

In this sense, with regard to the aforementioned magazine, although it is not a reason for consultation, it should be remembered that article 85.1 of the RGPD (in connection with recital 153 of the same RGPD) provides:

> *"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) EC).

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

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

Having said that, with regard to the publication on the website of the Plenary proceedings where the personal data of the person who occupied the City Council office is published, it

follows from the City Council report that the data published correspond to the applicant's identification data (name and surname and possible signature) in the context of his interventions that he carried out as a councilor from 1997 to 2007 without interruption.

In this sense, the dissemination of personal information through the publication of the minutes of the plenary session, which may be carried out by the City Council through the municipal website, contains personal data relating to people who have held positions of political responsibility. And, as personal data that are subject to the scope of 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 the guarantee of digital rights (hereinafter, LOPDGDD).

**III**

With regard to the first question that arises, specifically, whether *"a former councilor can request the right to delete/oppose her personal data in the proceedings of the plenary session, where she makes interventions as councilor"*.

In advance, it should be remembered that the right of deletion is not the same as the right of opposition.

Thus, article 17 of the RGPD, with the title *"Derecho de supresión ("the right to be forgotten")* ", regulates the right that the holders of personal data have to request the deletion of the data of its ownership on which the person in charge is carrying out treatment, in the following terms:

*"1. The interested party will have the right to obtain without undue delay from the person responsible for the*
*processing the deletion of personal data concerning you, which will be obliged to delete personal data without undue delay when any of the following circumstances occur:*
*a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
*b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;*
*c) the interested party opposes the treatment in accordance with article 21, section 1, and no*
*other legitimate reasons for the treatment prevail, or the interested party opposes it treatment in accordance with article 21, section 2;*
*e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;*
*f) the personal data have been obtained in relation to the offer of services of the Information Society mentioned in article 8, section 1.*

*2. When he has made personal data public and is obliged, by virtue of the provisions of section 1, to delete said data, the controller, taking into account the technology available and the cost of its application, will adopt reasonable measures, including technical measures, with a view to informing those responsible who are dealing with personal data*

*of the interested party's request to delete any link to those personal data, or any copy or replica thereof.*

*3. Sections 1 and 2 will not apply when the treatment is necessary:*
*a) to exercise the right to freedom of expression and information;*
*b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;*
*c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;*
*d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or*
*e) for the formulation, exercise or defense of claims"*

In relation to the right of deletion, recital 65 of the RGPD provides:

*"Those interested must have the right to have their personal data rectified concern and a "right to be forgotten" if the retention of such data infringes the present Regulation or the Law of the Union or of the Member States applicable to the person responsible for the treatment. In particular, the interested parties must have the right to have their personal data deleted and stopped being processed if they are no longer necessary for the purposes for which they were collected or treated in another way, if the interested parties have withdrawn their consent for the treatment or object to the processing of personal data that concerns them, or if the processing of their personal data otherwise violates the present Regulation. This right is relevant in particular if the interested party gives his consent as a child and is not fully aware of the risks involved in the treatment, and later wants to delete such personal data, especially on the Internet. The interested party must be able to exercise this right, even if he is no longer a child. However, the subsequent retention of personal data must be lawful when necessary for the exercise of freedom of expression and information, for the fulfillment of a legal obligation, for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment, for reasons of public interest in the field of public health, for filing purposes in public interest, scientific or historical research purposes or statistical purposes, or for the formulation, exercise or defense of claims."*

In accordance with the above, it should be borne in mind that article 17 of the RGPD regulates the right of deletion as the right of the interested party to demand from the person in charge of the treatment that they exclude their personal data from the treatment when given any of the circumstances provided for in this article (the data are no longer necessary for the purpose for which they were collected, the interested party withdraws the consent on which the treatment is based or opposes it and there is no other legitimate basis for to the processing, the processing violates the principles of the RGPD, or by legal imperative).

The right to deletion (or the right to be forgotten) is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. This is why the limitations to this right of deletion must be minimal given that through its

exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed.

Thus, the cases in which the RGPD excludes the right to deletion and oblivion, which are included in the third paragraph of article 17, are limited to those cases in which the treatment is necessary to exercise the right to freedom of expression and information, for the fulfillment of a legal obligation or a mission in the public interest or the exercise of public powers, for reasons of public interest in the field of public health, purposes of archiving, scientific, historical or statistical research and matters related to the formulation, exercise or defense of claims. Without prejudice to the limits provided for in article 23 of the RGPD.

It should be mentioned at this point, that letter e) of article 17.1 of RGPD establishes as one of the circumstances that give the interested party the right to obtain from the controller the deletion of his personal data, that this object to the treatment in accordance with Article 21.1 of the RGPD and other legitimate reasons for the treatment do not prevail.

Regarding the right of opposition, article 21 of the RGPD establishes:

> *"1. The interested party will have the right to object at any time, for reasons related to his particular situation, to personal data concerning him being the object of a treatment based on the provisions of article 6, section 1, letters e) of), including the elaboration of profiles on the basis of these provisions. The person in charge of the treatment will stop processing the personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation, exercise or defense of claims.*
> *(...)*
> *6. When personal data are processed for scientific or historical research purposes or statistical purposes in accordance with article 89, paragraph 1, the interested party will have the right, for reasons related to his particular situation, to oppose the treatment of personal data that concern him, unless it is necessary for the fulfillment of a mission carried out for reasons of public interest."*

In this specific case, it is clear from the City Council's report that the data published correspond to the identifying data of the applicant (name and surname and possible signature) in the context of his interventions that as councilor and it is noted that the links referred to give access to two acts of the Plenary, one from the year 2000 and another from the year 2003, in which the personal data appear, first name, surname and possible signature of the former councillor.

In this sense, the exercise of the right of deletion would lead to the City Council removing these data from any support of the City Council in which they may appear, while the opposition only seeks to avoid a certain treatment, in this case the publication over the internet.

Consequently, it must be considered that the former councilor is exercising before the City Council the right of opposition and not the right of deletion, given that from the file it seems that his will is to oppose a certain treatment, the publication of your data via the internet, an option expressly included in article 21 of the RGPD.

**IV**

Having said that, it is necessary to analyze whether the requirements that article 21 of the RGPD establishes regarding the right of opposition are met in this case and, consequently, whether it is considered justified to avoid the dissemination via the internet of the data of the person requesting with respect to the treatment to which their request refers.

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 aforementioned 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.

Article 46 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, the RLTC) explains:

> *"(...)*
> *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 debated in the full body of the corporation or provisions subject to publication in the corresponding official bulletin. In in all other 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.

The publication and dissemination of the minutes of the plenary session is an issue that has been previously analyzed by this Authority, among others, in opinions CNS 34/2022, CNS 10/2016; CNS 54/2015; CNS 60/2013; CNS 43/2013; CNS 5/2013, available on the website www.apdcat.cat .

On the other hand, 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 (hereinafter, LUMESPC) which provides:

*"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."*

This article not only introduces an authorization for the publication of the minutes of the sessions of the municipal plenum, but also establishes the mandatory publication. 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, 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 plenary on the occasion of the approval of an agreement or

arrangement. 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.

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

In this case, with regard to the content of the data of the published minutes, it appears that only the identification data of the former councilor's name, surname and signature are included, that is to say, the minimum due to the position. In this sense, it must be remembered that any councillor, as an elected public office, is obliged to support the publication of certain personal data on the Portal due to the requirements of the Transparency Law while holding office. Therefore, the dissemination of the proceedings of the plenary meeting, with the identification data of name and surname, complies with the data protection regulations.

However, and with regard to the signature data, applying by analogy article 70.2 of the RLTC for the purposes of what is provided for in article 24.1 of the LTC, when it regulates the right of access to public information , specifies that merely identifying data is understood to consist of the first and last name, the position or position held, body and scale, the functions performed and the telephone and the addresses, postal and electronic, of professional contact, referred to the staff at service of public administrations, senior officials and managerial staff of the public sector of public administrations. Therefore, by analogy, this publication obligation would not affect the information regarding the handwritten signature.

In addition, article 110 of the TRLMRLC determines the minimum content of the proceedings and, among others, specifies that it must contain the list of attendees and the indication of the people who intervened, but in no case does it speak of the signature.

On the other hand, the principle of data minimization, previously referenced, would not justify maintaining the publication of the handwritten signature. In this case, it can be considered unnecessary for the purpose that the City Council seems to be pursuing when publishing the minutes of the plenary session, such as encouraging citizens' participation in municipal public affairs, and being transparent and responsible in the exercise of public functions. In this sense, this Authority has pronounced when it comes to keeping various information of former councilors published on the Portal, for all, the opinion CNS 40/2021.

Now, and this links to the second question raised by the City Council, when it asks " *for how long is it recommended to keep the full proceedings of the plenary session published in the municipal HQ/transparency portal"* .

In the consultation, the City Council's report specifies that the applicant was a councilor from 1995 to 2007, but no information is included on whether the former councilor has given any specific reason of your request . Nor does the City Council justify the need to keep these acts published. Therefore, in this report it will be considered that there is no specific reason.

By way of guidance, articles 13.5 and 13.6 of the RLTC, which establish the general obligations and form of publication required for all information content that is the subject of active advertising, provide that the information to be published must to refer to the current

year, and must remain published for a minimum of five years from its publication, unless another term is established in the RLTC or another applicable rule.

On the other hand, permanent advertising could be considered an intrusion into the fundamental right to the protection of personal data, and in this sense, this Authority has agreed in Recommendation 1/2008 on the dissemination of information containing data of a personal nature via the Internet, that in the event that the applicable regulations do not expressly provide for a period of public exposure, the dissemination must be temporarily limited to the period necessary to achieve the purpose that justifies the publication of the data , as it could be, for example, to comply with the principle of transparency in administrative action.

At this point, there is no provision in the local regulations that delimits the terms of publication of the information on the minutes of the sessions, aside from the provision that, in the general transparency regime, referred to above, is contained at least advertising.

This assumes that the circumstances of the specific case will have to be considered when considering whether, taking into account the time that has passed since the public exhibition of said acts, the purpose remains fulfilled and, in this sense, online with Recommendation 1/2008, it would be advisable not to continue giving publicity to said events via the internet.

Thus, it could be considered that the universal and unlimited dissemination of information that has no relevance or public interest, through the Internet, can injure people's rights .

In accordance with what has been said, taking into account that these are two acts of the municipal plenum of the years 2000 and 2003, respectively, and that the period of dissemination of the information is more than twenty years, it would seem that the publication in the municipal seat has more than fulfilled the purpose of encouraging citizens' participation in municipal public affairs, and of being transparent and responsible in the exercise of public functions . In this sense, considering the right to be forgotten for the purpose of publicizing the proceedings, it would seem proportionate to respond to the request made, without prejudice to the fact that the same City Council that ordered the publication of the information established, in the year of its self-organizing power, the term of publication of said acts, without prejudice, that it must preserve (not publish) them permanently for their informational and historical value, as provided by the acts of the Plenary, the Calendar of conservation and elimination of the Municipal Archives Network of the year 2019.



**v**

As to the third issue raised by the Corporation, in the event that " *if a request for access to public information from one of these plenary acts is submitted, should or should not the personal data of the former councilor."*

In relation to this end, the jurisprudence of the Supreme Court is reiterated in understanding that the publicity of the Plenary sessions has as its ultimate purpose that any citizen can know everything that happens in a Plenary.

At this point, it should be remembered that the minutes of a municipal meeting are public and, in principle, any request for access to information relating to the content of said minutes

would lead to having to hand over a copy of said minute, without prejudice to considering whether certain parts of said act should be anonymized.

This is established in article 70 of Law 7/1985, of April 2, regulating the bases of Local Government, when it indicates that " *The sessions of the Plenum of the local corporations are public. However, the debate and voting of those matters that may affect the fundamental rights of citizens referred to in article 18.1 of the Constitution may be secret, when it is agreed by an absolute majority, and previously article 69 provides* that *" Local Corporations will provide the widest information on their activity and the participation of all citizens in local life".*

Article 110 of the TRLMRLC determines the minimum content of the acts:

1. The date and time the session starts and ends.
2. The relationship of subjects discussed.
3. The relationship of the assistants.
4. The indication of the people who intervened.
5. The incidents that happened.
6. The votes cast and the agreements adopted.
7. The succinct relationship of the opinions expressed.

In the same way, article 109 of the ROF refers to the contents that must be included in the corresponding minutes.

Likewise, in accordance with the provisions of the regulations on the protection of personal data, in the drafting of the minutes, the secretary of the corporation must avoid collecting personal data or information incidentally included in the interventions of the councilors but that are not substantial or necessary to give meaning to your intervention, since the drafting of the minutes must also respect the principles of the data protection regulations, among which is that of minimization, for which personal data can only be processed when they are adequate, relevant and not excessive.

If it is necessary to anonymize or dissociate the information, it is necessary to eliminate those data that allow the identification of the affected person, directly or indirectly, in reasonable terms, that is to say, without disproportionate efforts. At the same time, dissociation should not eliminate elements or information that make the understanding of the information as a whole unfeasible. This double condition will mean that the local corporation has to make an assessment or weighting regarding which system of dissociation can be more effective in each case. With regard to the criteria for the dissociation of personal data in the publication of Plenary Agreements and other documents, Opinion 10/2016 of the Catalan Data Protection Authority dealt with this issue.

At this point, it is advisable to carry out a successive judgement, when it comes to information subject to active advertising: a) evaluate whether this information contains personal data, b) if so, whether it is data specially protected, c) in the negative case, if it is merely identifying data related to the organization, operation, or public activity of the corresponding body, d) in the event that they are not, carry out the aforementioned weighting ie) finally, assess whether the limits of article 23 Law 19/2014 apply.

In the specific case, it is the merely identifying data of the former councilwoman and, from this point of view, and in line with what is stated in the legal basis IV, it would not be

necessary to anonymize the merely identifying data of the former councilor who intervened due to his position, which would be applicable to the name and surname, as well as the position, but not so to other ends such as the signature which, from the point of view of the data protection regulations, could be deleted.

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

## conclusion

The City Council can keep published on the portal the proceedings of the plenary meeting that are necessary to fulfill the obligations established in the transparency law. In this case, the minutes of the plenary session can be published on the City Council's website with the identification data (name and surname) by reason of the position, without including, in accordance with the principle of data minimization, the publication of the handwritten signature.

With regard to the time it is recommended to keep the full minutes of the Plenary published, this must be temporarily limited to the period necessary to achieve the purpose that justifies the publication of the data.

With regard to the possible request for access that may be raised regarding these acts, it would not be necessary to anonymize the merely identifying data (specifically, name, surname) of the former councilor who intervened due to his position. As for the handwritten signature, access would not be justified.

Barcelona, March 23, 2023