

National Data Protection Commission

OPINION/2022/106

I. Request

1. The Institute of Registries and Notaries, I.P. (IRN) came to ask the National Commission for Data Protection (CNPD) to issue an opinion on a protocol that aims to regulate access by the Municipality of Cuba to the car registration database.
2. The request is made pursuant to paragraph d) of paragraph 2 of article 27-D and paragraphs 2, 3 and 7 of article 27-E of Decree-Law no. 54 /75, of February 121, diploma that defines the Car Registration System.
3. The parties to the protocol are the IRN, the Institute of Financial Management and Justice Equipment, I.P. 0GFEJ) and the Municipality of Cuba.
4. Under the terms of Clause 1 of the Protocol, the Municipality of Cuba is authorized to access vehicle registration information through online consultation of the respective database, located at the IGFEJ, for the exclusive purpose of pursuing the competence it is legally committed within the scope of monitoring compliance with the provisions of the Highway Code and complementary legislation on public roads under its jurisdiction, including parking, removal and collection of abandoned vehicles, in the area of the Municipality of Cuba.
5. The following data are accessed: «name, habitual residence, number and date of the identification document and tax identification number, when available, or firm, headquarters and legal person number, of the owner or lessee or usufructuary, and also the charges and charges" (No. 1 of Clause 1a).
6. Access to the database is done through a search by vehicle registration number and is conditioned to the mandatory identification of the case number or the report to which they relate, (cf. no. 1 of Clause 2.a).
7. For auditing purposes, accesses are registered for a period of two years, in accordance with the provisions of Clause 2(2) of the protocol.
8. Pursuant to Clause 3 of the Protocol, the City Council of Cuba must observe the legal provisions in force on the protection of personal data contained in Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016 , on the protection of natural persons with regard to the processing of personal data and the free movement of such data and which

repeals Directive 95/46/EC (General Data Protection Regulation) and Law No. 58/2019 , of August 8, namely regarding respecting the purpose for

1 As amended by Decree-Law No. 182/2002, of 20 August.

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that consultation was authorized, which should be limited to what is strictly necessary, not using the information for other purposes; not to transmit the information to third parties; to take the necessary security measures to guarantee the integrity and proper functioning of the database. Any form of interconnection of personal data is also prohibited.

9. It is also foreseen, in the same clause, that, if the City Council resorts to a subcontractor to execute the protocol, it is bound, namely, to guarantee the security of the treatment, to ensure that the people involved assume a commitment to confidentiality and to inform the IRN of all the information necessary to demonstrate compliance with the obligations set forth in the RGPD, including facilitating and contributing to audits or inspections conducted by the IRN or by another auditor mandated by this mandate.

10. Access is carried out through two types of alternative channels, in both cases with the implementation of IPsec tunnels, to guarantee the confidentiality of the data.

11. Also under the terms of the protocol, the City Council of Cuba undertakes to communicate in advance to the IRN the identification of users accessing the database, by indicating the name, category/function and NIF, with a view to assigning login credentials to the system, and each user will receive, in a sealed letter, a personal password, which will make him responsible for the use he makes of the service.

12. The protocol is concluded for a period of one (1) year, tacitly renewable for equal periods.

II. appreciation

13. As for the article, the possibility for municipalities to access the vehicle registration stems from the combined provisions of paragraph d) of paragraph 1 and paragraph a) of paragraph 3 of article 5 of Decree-Law no. 44/2005, of February 27th, last amended by Decree-Law No. 146/2014, of October 9th.

14. The City Council of Cuba is, under the terms of article 5, paragraph 1, paragraph d) and paragraph 3, paragraph a) of Decree-Law no. 44/2005, of February 23, the entity responsible for supervising compliance with the rules for parking vehicles on public roads and spaces and for road traffic, including the participation in road accidents and the removal and collection of abandoned or improperly parked vehicles, in the territorial area of the Municipality of Cuba.

15. In accordance with paragraph d) of paragraph 2 of article 27-E of the regime relating to the Automobile Registration, the personal data of the automobile registration must be communicated, for the pursuit of the respective attributions, to the entities in charge of inspection of the Highway Code. Paragraphs 2, 3 and 7 of article 27-E of the same diploma also allow these entities to be authorized to consult a data transmission line, provided that the security guarantees are observed and subject to the signing of a protocol .

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16. Thus, there is a basis of legitimacy for this processing of personal data, in terms of access, under Article 6(1)(e) of the RGPD.

17. With regard to the communication of individual users of the Municipality of Cuba to the IRN, the CNPD verifies that in addition to the name and category/function, it is also planned that the user's tax identification number (NIF) and mailing address be communicated to the IRN of the user, «with a view to assigning user names ("usernames") and respective keywords ("passwords") for connection to the system» (cf. paragraph 1 of Clause 5a).

18. As already stated in previous opinions of the CNPD, the pertinence of the processing of "NIF" data by the IRN for the purposes indicated in Clause 5.a. The "NIF" constitutes an identification number of citizens for tax purposes, not understanding at all the collection by the IRN of that personal data of users, whose accesses to the car registration are carried out in the exercise of legal competences in a professional context.

19. Therefore, the CNPD considers that it is not only appropriate and necessary to collect the NIF of users for the purpose of assigning access credentials, in violation of the principle of data minimization, recognized in article 5, paragraph 1, paragraph c) of the RGPD, as none of the conditions of lawfulness provided for in article 5, paragraph 1, of the RGPD have been verified, so that the IRN does not have legitimacy to process the TIN of users of the Clearinghouse Municipality of Cuba who access

the vehicle registration in the performance of their professional duties.

20. Regarding the "email" data, its treatment for direct contact with the user within the scope of user management may be relevant. However, if the email address is used as a username, understands the CNPD that such a solution should be rethought, since the (professional) email address is personal data known to a wide range of people, which immediately weakens significantly a single-factor authentication composed of two elements. data "email" is collected for the purposes of individualized contact within the scope of user management (for example, password recovery), then this purpose must be specifically provided for in the text, and, in any case, it must be added that if deals with the professional email address, as only this should be used in this context.

21. Regarding the retention period of system access records for auditing purposes (logs), while it is indicated that the logs referred to in Clause 2.a have a conservation period of two years, therefore a fixed period (minimum and maximum), the log conservation period referred to in Clause 5.a refers to a minimum period of two years, leaving the maximum period open. It is also suggested for reasons of greater clarity that in paragraph 4 of Clause

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5.a, where it is stated that «each invocation performed by the user identified in the previous number is registered in the audit system for a minimum period of two years», is replaced by "(...) performed by the user to which the numbers refer previous

22. Still with regard to users, the protocol must provide, possibly by addition to clause 5.a, that the City Council of Cuba undertakes to maintain, at all times, an updated list of users, which is communicated to the IRN/IGFEJ at the beginning of the execution of the protocol and later whenever there are changes to that list, adding or eliminating users.

23. With regard to security measures relating to the transmission of data, without prejudice to the need for permanent verification of their compliance, they appear to be appropriate.

24. The intervention of the IGFEJ in this protocol stems from the attribution provided for in paragraph m) of paragraph 2 of article 3 of Decree-Law no. 164/2012, of 31 July.

III. Conclusion

25. The CNPD considers that there is legitimacy for access by the City Council of Cuba to personal data from the vehicle registration, within the limits and conditions recommended by this protocol, with the changes resulting from this opinion.

26. With regard to the processing of "NIF" data, the CNPD considers that the IRN does not have legitimacy to process this personal data of users in the context of the performance of their professional duties, so the text of the protocol must be amended in accordance.

27. It is recommended to amend paragraph 4 of Clause 5.a with a view to clarifying it.

28. A rule should also be introduced regarding the maintenance by the City Council of Cuba of an updated list of users, which must be communicated to the IRN for access control purposes.

Approved at the meeting of November 15, 2022

Filipa Calvao (President)