

Ref.: CNS 4/2018

Complementary opinion to Opinion CNS 56/2017 issued in relation to the publication of the data of beneficiaries of grants granted

A letter from a public entity is submitted to the Catalan Data Protection Authority in which additional clarification is requested regarding the doubts arising as a result of the opinion CNS 56/2017 issued in relation to the publication of the data of beneficiaries of subsidies granted by the entity.

Specifically, it states that in Legal Basis III of that opinion, in which the publication of the beneficiaries is analyzed as a means of notification of the decision to grant the aid, it is concluded that the data that must be recorded are those relating to the first and last name, given that the publication of this data together with the NIF or DNI number with all the figures may be excessive. In the event that there was a coincidence of names and surnames between the contestants, the last four digits of the NIF or DNI number of the affected persons could be published.

It is explained below that we are dealing with a high volume of applications, and that the grant management computer application would not currently allow us to automatically check the coincidence of several first and last names, which is why this review should be done individually, which would be impossible given the volume of requests.

For this reason, and taking into account the provisions of the ninth additional provision of the Draft Organic Law on the Protection of Personal Data, approved by the Council of Ministers on November 10, 2017, which provides that when the publication of an administrative document contains personal data of the affected person will be identified in it by the first and last name, adding the last four numerical digits of the national identity document, foreigner's identity number, passport or equivalent document, the possibility for the entity to identify the beneficiaries of the aid by indicating the first and last names and the last four digits of the NIF or DNI number, regardless of whether there is a coincidence of first and last names between the documents.

On the other hand, and with regard to the annexes relating to the people who are denied aid, those who are excluded and those who remain on the reserve list, the entity states that they will be identified solely by means of the NIF or ID number.

Based on these considerations, the entity requests the Authority to clarify whether it complies with the current regulations on data protection, publish both for notification purposes and for transparency purposes, the first and last names together with the last four digits of the NIF or DNI number or equivalent document of all aid beneficiaries.

Having analyzed the query, which is not accompanied by other documentation, and in accordance with the report of the Legal Counsel, I issue the following opinion:

(...)

II

The opinion CNS 56/2017 issued by this Authority on December 13, 2017, resolves the doubts raised by the entity in the previous consultation formulated in relation to the publication of the data of the beneficiaries of aid and subsidies and its compliance with the regulations for the protection of personal data. Specifically, the doubt arose regarding which were the identification data of the beneficiaries (name and surname and/or NIF) that had to be published in the framework of two actions with different purposes. The first, referring to the publication of these beneficiaries on the electronic board of the Administration for the purposes of notification of the resolution to the persons interested in the procedure for granting the corresponding aid or subsidy, and the second, referring to the publication of the beneficiaries on the corporate website, for the purposes of complying with the obligations of publicity and transparency.

The Authority analyzes in the legal foundations III and IV of this opinion, the different regulatory frameworks that protect the publication of the identification data of the beneficiaries for one and another purpose, and concludes the following:

"The administrative procedure legislation would enable the publication of the names and surnames of the persons applying for the grants granted in order to achieve the purpose of notification in the course of the concession procedure, if this is provided for in the call. In the event that there was a coincidence of names and surnames between the contestants, the last four digits of the NIF of the affected persons could be published.

The transparency legislation would enable the publication of the names and surnames of the beneficiaries of subsidies and aid, for the purposes of achieving the purpose of publicity and transparency in matters of administrative subsidies, without prejudice to the fact that there may be cases in which for reasons of concurrence of circumstances of social vulnerability of the people affected, it is necessary to preserve the identity of these people."

Based on the considerations made in the basis III of the opinion, which analyzes the publication of the beneficiaries as a means of notification of the concession resolution, the entity considers the possibility of publishing the first and last names together with the four digits of the NIF or ID number or equivalent document of all the beneficiaries of the aid, not only for the purpose of complying with the purpose of notification of the resolution within the framework of the grant awarding procedure, but also for the purposes of transparency . All this, taking into account two circumstances that, according to the entity, could justify that the publication was made with the data that is proposed.

Thus, on the one hand, it is clear that the entity manages a high volume of requests and that the computer application through which the grants are managed does not currently allow checking the coincidence of several names and surnames automatically, so this review would have to be done individually, a task which, according to the entity, would be impossible given the volume of requests.

On the other hand, it is stated that the joint publication of the first and last names and the last four digits of the NIF or DNI number of those affected would already be provided for in the ninth additional provision of the draft Organic Law on the Protection of Personal Data, approved by the Council of Ministers on November 10, 2017.

Specifically, and as noted in opinion CNS 56/2017, the ninth additional provision of this project provides:

"Identification of those interested in notifications through announcements and publications of administrative acts."

When the publication of an administrative act contains personal data of the affected person, it will be identified by means of their name and surname, adding the last four digits of the national identity document, foreigner's identity number, passport or equivalent document.

When it comes to notification through announcements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, the affected person will be identified exclusively through the full number of your national identity document, foreign identity number, passport or equivalent document.

When the affected person lacks any of the documents mentioned in the two previous paragraphs, the affected person will be identified solely by means of their number and last name. In no case should the number and surname be published together with the full number of the national identity document, foreign identity number, passport or equivalent document."

It should be noted that this precept refers to the "Identification of those interested in the notifications by means of announcements and publications of administrative acts", and therefore, the treatment of the personal data of those affected, - in this case the beneficiaries of the aid-, takes place within the framework of the actions of the administrative procedure, for the purposes of notifying the administrative act to the persons interested in it. This implies that the eventual authorization for the joint publication of the first and last name and the last four digits of the NIF or DNI number, or equivalent document, which may be produced in accordance with this rule, would be given to fulfill the purpose of notification in the yes of the corresponding administrative procedure, and not for the purpose of transparency.

This precision has been made, and since it is currently only a draft law, this cannot be taken into account as an enabling rule for the proposed treatment, for the purposes of determining whether or not it would conform to current regulations on data protection. It will be necessary to see which is the final text approved by the Courts, and apply it once the Law is published and comes into force.

Beyond this, the reasons that, according to the entity, would justify the joint publication of the first and last names and the last four digits of the NIF or DNI number, are basically specified in the difficulty of having to check the coincidence of first and last names among grant applicants. To resolve this issue, the entity should be aware that as the data controller, it must ensure compliance with the principles

and guarantees established in article 4 the LOPD, and therefore assess in each case whether the data that is published is necessary, adequate and not excessive.

In this regard, if the IT application used for the management of grant files does not automatically distinguish the coincidence of first and last names between applicants, in principle this check should be able to be done individually .

If this is not done, the risk of coincidence must be taken into account.

The entity points out that doing so individually would be impossible given the volume of requests being processed, without providing any data indicating what this volume would be.

At the outset, this circumstance should be evaluated not with respect to the total volume of applications that the entity may receive from the set of calls for aid it processes, but with respect to the number of applications submitted in each of the lines of 'help it offers. From here, depending on the number of applications received, it would be necessary to assess the greater or lesser real risk of matching names and surnames between the participants.

Thus, when due to the number of requests there is a high real risk of coincidence, the joint publication of the first and last names and the last four digits of the NIF or DNI number or equivalent document of all the beneficiaries of this call may be justified. This would ensure the univocal identification of the beneficiaries without giving rise to errors or confusion, while guaranteeing the confidentiality of the NIF or DNI number of all of them. By way of example, this would be the case of the help lines that appear in the memory of the entity's activities (year 2016) available on the corporation's website, "Procedure for obtaining accreditation of the family income section and of the Equitat scholarships for the reduction of university study credits for the 2016-2017 academic year", and "General scholarships for the 2015-2016 academic year for students who take post-compulsory studies (GRAL) ", through which 45,143 and 71,276 requests were processed respectively.

On the other hand, when due to the number of requests, the risk of coincidence is low, it does not seem that the publication of this data can be justified with respect to all beneficiaries. In these cases, the possible coincidence is easily detectable and if it occurs, the solution would be to publish the last four digits of the NIF or DNI number of the beneficiary whose name coincides with another applicant. Taking as a reference the figures published in the 2016 activity memo, and by way of example, this would be the case of "Aids to cover the costs of registration for the accreditation test for those students who start for the first time degree studies in the 2014-2015 academic year at a Catalan university (...), in accordance with the Common European Framework of Reference for Languages (CEFR)", with 18 applications, or from the "Ajuts to take courses in third languages of the Catalan educational system of the AESOR (reaching 24 requests). The risk of coincidence in these cases can be considered low.

In conclusion, and with the information we have, it does not seem to be justified the systematic and joint publication of the first and last names and the four digits of the NIF or DNI number of all the people who are beneficiaries of each of the lines of grants and subsidies managed by the entity. It would be necessary to assess what the real risk of coincidence is, which will depend in principle on the number of people who participate in each of the calls. Based on this assessment, it would be advisable to limit the publication of this data with respect to all the beneficiaries of the respective call when there is a high risk of coincidence.

This, without prejudice to the fact that if the text of the additional provision mentioned in the draft Organic Law on the Protection of Personal Data is approved, the rule will enable the publication of the personal data of all beneficiaries in the terms proposed by the entity (name and surname plus the last four digits of the NIF or DNI number, in all cases).

However, it must be borne in mind that this assessment must be made with respect to the actions carried out within the framework of the respective procedures and for the purpose of complying with the purpose of notifying the interested parties. The assessment that must be made with respect to the publication of these same data for the purposes of complying with the purpose of transparency is different, as was explained in the basis IV of the opinion CNS 56/2017.

III

With regard to the publication of the beneficiaries in order to comply with the obligation of publicity for the purposes of transparency, and reiterating what was said in the aforementioned legal basis IV, the information on the subsidies granted, that is, the amount, the objective or purpose and the beneficiaries, which impose articles 15.1 c) Law 19/2014, of December 29, on transparency, access to public information and good governance, 8.1. c) Law 19/2013, State Law 19/2013, of December 9, on transparency, access to public information and good governance, and specific provisions regarding publicity of Law 38/2003, of November 17, subsidies, (art. 20.8 LGS), aim to enable citizens to know exactly who receives a subsidy, how much, and what they receive it for. For these purposes, it would be sufficient to publish the name and surname of the affected persons. The publication of the NIF or DNI number would be unnecessary, and therefore excessive, in accordance with the principle of data minimization.

Having said that, the possibility of publishing the first and last names and the last four digits of the NIF or DNI number of the beneficiaries raised in this second consultation by the entity, does not seem to be justified for the purposes of transparency.

In this case, the risk of coincidence of names and surnames of the beneficiaries should be considered not with respect to the people who participate in the respective calls, but with respect to any citizen who may have the same name and surname as any of the people who they appear as beneficiaries of an aid or subsidy, and here the risk could be high.

However, the fact of adding the last four digits of the NIF or DNI number does not provide citizens with any additional element that allows the identification of the beneficiaries, given that in principle they do not know the last four digits of the NIF or DNI number of the beneficiaries. Nor would it provide additional information to those people who may have the same first and last name as the beneficiary, given that they already know whether or not they have applied for aid, and therefore the information they would obtain would not differ from the fact of knowing that there is there is a person with the same first and last name who has benefited from a certain subsidy.

IV

Lastly, and with respect to publishing in the annexes to the resolutions only the NIF or ID number of the people who have been denied aid and those who have been excluded, insofar as the purpose of this publication is produced within the framework of the procedure, and in order for the affected person to be aware of the existence of an administrative act that affects him and that must be notified, it should be noted that the identification through the NIF or DNI number is sufficient and a guarantee of unequivocal identification of each of those interested in the procedure, and therefore, the treatment would conform to the principles and guarantees of the data protection regulations.

A separate mention must be made regarding the people on the reservation list. Faced with the possibility of choosing between publishing the NIF or ID number, or the name and surname of these persons, it should be noted that choosing to publish the name and surname would enable the other concurrent persons, interested in the procedure, to identify those people who are recognized as having a certain expectation of the right to obtain aid, a right which means that they are in a higher legal position than those people who have been denied it or have been excluded.

Likewise, it should be borne in mind that to the extent that they are people who could end up being granted the requested aid, it is possible that not only their first and last names will be published but also the four last digits of the NIF or DNI number, especially if we take into account the provisions of the ninth additional provision of the new LPOD project. If this happens, it would be relatively easy to have the full name and surname and NIF of these people. Faced with this risk, it would be necessary to opt for the same criterion that is used for the beneficiaries, that is, publish the lists of people in reserve with the first and last names, adding in case of coincidence the last four digits of the NIF or ID number.

Conclusions

The publication of the name and surname together with the last four digits of the NIF or ID number of all the beneficiaries of aid and subsidies for the purposes of achieving the purpose of notification of the resolution, when so provided for in the call, would be justified in the case of the existence of a high risk of coincidence of names and surnames between the competitors, a risk that will have to be assessed based on the volume of applications processed in the respective call.

On the other hand, adding the four digits of the NIF or DNI number, to the name and surname of the beneficiaries would not be an additional guarantee for the purposes of the public being able to identify these people and therefore, would not be justified for the purposes of fulfilling the purpose of transparency

With regard to the publication of the data of people who have been denied aid or have been excluded, their identification can be done by means of the NIF or DNI number. In

change, in the case of people who are on reserve lists, they would have to identify themselves with their first and last names, and if applicable the last four digits of the NIF or DNI number, following the same criteria as the one applies to the people who are beneficiaries.

Barcelona, February 16, 2018

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