

CNS 4/2019

**Opinion in relation to the query made by the Data Protection Officer of an entity on data protection in the publication of decrees and other resolutions**

**A letter from the Data Protection Officer of an entity on data protection in the publication of decrees and other resolutions is presented to the Catalan Data Protection Authority.**

**Specifically, it states that they have doubts regarding the application of the Seventh Additional Provision of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights regarding the identification of those interested in notifications by means of announcements and publications of administrative acts.**

**He points out that in the case of the Human Resources Area "resolutions are generated and decrees are approved that are not published in the official newspapers but contain data of a personal nature and on occasions sensitive from the perspective of privacy and, which in an organization with few employees, identification with first and last name makes it easy to identify the person affected by the resolution."**

**It states that the entity wants to establish "a single criterion on how to identify the data of natural persons in the different administrative documentation that we carry out, while preserving confidentiality and complying with current legislation". For these purposes, it is considered whether the criterion of identifying using only the NIF can always be used, or whether this criterion is reserved for the publications provided for in accordance with article 44 of Law 3**

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

**I**

**(...)**

**II**

**In order to interpret the regulation contained in the Seventh Additional Provision of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights regarding the identification of those interested in notifications through advertisements and publications of administrative acts, it is necessary to take into account the regulatory principles of the right to the protection of 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 (hereinafter, RGPD), is understood as data of a personal nature: "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".

The RGPD establishes that the processing of personal data, understood as "any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction", it must be submitted to the principles and guarantees of the RGPD.

Among these principles it is necessary to take into consideration, first of all, the principle of lawfulness (article 5.1.a) according to which personal data must be treated lawfully, loyally and transparently in relation to the interested party. According to article 6 of the RGPD, the treatment will only be lawful if it meets at least one of the following conditions:

"a) The interested party has given consent for the processing of their personal data, for one or several specific purposes. b) The treatment is necessary to execute a contract in which the interested party is a party or to apply pre-contractual measures at their request. c) The treatment is necessary to fulfill a legal obligation applicable to the person responsible for the treatment. d) The treatment is necessary to protect the vital interests of the person concerned or of another natural person. e) The treatment is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment. f) The treatment is necessary to satisfy legitimate interests pursued by the person in charge of the treatment or by a third party, as long as the interests or fundamental rights and freedoms of the interested party that require the protection of personal data do not prevail, especially if the interested is a child. (...)"

But in addition, once the legality of the treatment has been determined, the personal data must be treated in accordance with the principle of minimization provided for in article 5.1.c) of the RGPD, according to which

"1. The personal data will be: (...)  
c) adequate, relevant and limited  
to what is necessary in relation to the purposes for which they are treated ("minimization of data"); (...)"

### III

In the case we are dealing with, the legality of the treatment is given by the provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPACAP), and, depending on the matter, by other sectoral regulations.

Article 45 of the LPACAP establishes the cases in which administrative acts must be published, in the following terms:

"Article 45. Publication.

1. Administrative acts must be published when the regulatory rules for each procedure establish it or when reasons of public interest appreciated by the competent body so advise.

In any case, administrative acts must be published, and this has the effects of notification in the following cases:

a) When the act is addressed to an indeterminate plurality of people or when the Administration considers that the notification made to a single interested party is insufficient to guarantee the notification to all, and in the latter case it is additional to the one made individually.

b) When it comes to acts that are part of a selective procedure or competitive competition of any kind. In this case, the call for the procedure must indicate the medium in which successive publications will be carried out, and those carried out in different places are not valid.

2. The publication of an act must contain the same elements that article 40.2 requires regarding notifications. What is established in section 3 of the same article is also applicable to the publication. In cases of publication of acts containing common elements, the matching aspects may be published together, and only the individual aspects of each act must be specified.

3. The acts must be published in the corresponding official newspaper, according to the Administration from which the act to be notified comes from.

4. Without prejudice to the provisions of article 44, the publication of acts and communications that, by legal or regulatory provision must be practiced on a notice board or edicts, is understood to be completed by its publication in the newspaper corresponding official."

Also for publication purposes, article 44 of the LPACAP establishes:

"Article 44. Unsuccessful notification.

When the persons interested in a proceeding are unknown, the place of notification is ignored, or, once this has been attempted, it has not been possible to practice, the notification must be made by means of an announcement published in "Official Bulletin of the State".

Likewise, previously and on an optional basis, the administrations can publish an announcement in the official bulletin of the autonomous community or province, on the notice board of the City Council of the last address of the person concerned or of the consulate or section consular of the corresponding

Public administrations can establish other complementary forms of notification through the rest of the media, which do not exclude the obligation to publish the corresponding announcement in the "Official State Gazette".

Pursuant to these provisions, we may encounter different cases of publication of administrative acts, including the resolutions, decrees and announcements to which the query may refer. Thus, in accordance with these forecasts, the publication proceeds in the following cases:

- When the act has an indeterminate plurality of people.
- When the Administration considers that the notification made to a single interested party is insufficient to ensure notification to all.
- When it comes to selective procedures or competitive competition, in accordance with that establishes the applicable regulations and the call.
- When established by the regulatory rules of each procedure.
- When advised by reasons of public interest appreciated by the competent body.
- When personal notification has been attempted and failed.
- When the interested parties are unknown or the place of the notification is ignored.

In cases where the applicable regulations or the purpose inherent in the publication do not require the inclusion of personal data, the application of the minimization principle must lead to not including any identifying data of the affected person.

In cases where the events or announcements subject to publication contain personal data that allow the identification of the affected persons, we must distinguish two basic situations, to which a third can be added:

- a) Cases in which the publication is made for advertising purposes, so that anyone can become aware of it. This would be the case, for example, in which the regulations governing a selective or competitive process provide for personal notification to the affected persons, but also publication to guarantee general knowledge of the winners of the process. This would also be the case, for example, of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) and Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), which imposes on Public Administrations certain obligations to "advertise" the public information they generate.
- b) Cases in which publication is carried out as a substitute or complementary means of individual notification. In this case, the purpose of the publication is not to provide general information, but rather that the publication is addressed to the interested person himself. This would be the case, for example, of the publication of an advertisement as a result of an unsuccessful notification in accordance with the provisions of article 44 LPAC.
- c) Cases in which the publication fulfills both the purpose of general publicity set out in letter a) and the notification function set out in letter b). It would be the case of concurrent processes in which individual notification to individuals is not foreseen

affected but only a publication of the result, both so that the interested persons themselves can know the result, and so that third parties can also be aware of it.

This distinction is relevant because, for the purposes of the application of the provisions of the seventh additional provision of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (LOPDGDD), the regime to be applied with regard to the identification of those affected, it will have to be one or the other.

#### IV

The seventh Additional Provision of the LOPDGDD has come to specify, under the prism of proportionality, a criterion that allows to minimize the impact on the right to the protection of personal data that the legal provision of publishing certain information that contains data personal

To determine which are the identifying data of those affected that are considered appropriate and relevant in the notifications by means of announcements and, in the publications of administrative acts Additional Provision Seven of the LOPDGDD establishes the following criteria:

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

1. When it is necessary to publish an administrative act that contains personal data of the affected person, it must be identified by means of his first and last name, with the addition of four random numerical figures from the national identity document , the foreigner's identity number, the passport or an equivalent document. When the publication refers to a plurality of those affected, these random numbers must be alternated.

When it comes to notification by means of announcements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, on the common administrative procedure of public administrations, it has to identify the affected person exclusively by means of the full number of their national identity document, foreigner's identity number, passport or an equivalent document.

When the affected person does not have any of the documents mentioned in the two previous paragraphs, he must be identified solely by his first and last name. In no case should the name and surname be published together with the full number of the national identity document, the alien identity number, the passport or an equivalent document.

2. In order to prevent risks for victims of gender-based violence, the Government must promote the development of a collaboration protocol that defines safe procedures for the publication and notification of administrative acts, with the participation of the bodies with competence in the field."

This provision differentiates the mechanism of identification of interested parties according to whether the need to make the data public derives from an obligation to publish an administrative act or is a consequence of the need to make a notification through announcements, to one or several interested parties, of an administrative act and, in particular, as a result of an "unsuccessful" notification provided for in article 44 of the LPACAP.

That is why we must distinguish:

a) When the publication of the administrative act that contains personal data that must be published for the purpose of publicity, of general knowledge by any person (situation described in section a) of Legal Basis III of this opinion), the identification of those affected must be done in accordance with what is established in the first paragraph of the first section of the seventh additional provision, that is, by means of the name and surname of the affected person adding four random numerical digits of number of your national identity document, foreigner's identity number, passport or an equivalent document.

For the determination of these four figures, as a provisional criterion until there is a regulatory deployment of this aspect that allows the provisions of this paragraph to be applied with full guarantees for the right to data protection, this Authority considers that the right can be guaranteed by applying the guidance that, jointly, the Spanish Data Protection Agency, the Basque Data Protection Agency, the Andalusian Data Protection and Transparency Council and this Authority have adopted. This guidance can be consulted on the website <http://apdcat.gencat.cat/web/contenut/01-normativa/documentos/VAR-9-2019-orientacio-disposicio-addicional-7-cat.pdf> of the Authority in the following link: [authority/normativa/documentos/VAR-9-2019-orientacio-disposicio-addicional-7-cat.pdf](http://apdcat.gencat.cat/web/contenut/01-normativa/documentos/VAR-9-2019-orientacio-disposicio-addicional-7-cat.pdf).

The joint adoption of this guiding criterion aims to prevent the adoption of different formulas in application of the aforementioned provision from giving rise to the publication of numerical figures of the identification documents in different positions in each case, enabling the complete recomposition of 'these documents.

b) In the situation described in section b) of Legal Basis III of this opinion, that is to say, when the purpose of the publication is only the notification of the administrative act to the interested person, the second paragraph of the The first paragraph of the seventh additional provision of the LOPDGDD has provided that the mechanism for identifying those affected contains the minimum data necessary to allow them to know that the communication is addressed to them. Consequently, in this case, the identification of the interested party will be carried out through the full number of his national identity document, the foreigner's identity number, the passport or an equivalent document. Only with respect to those interested who do not have any of these documents, they can be identified by their first and last names.

c) It cannot be overlooked, however, as explained in section c) of Legal Basis III, that there are cases in which the publication of the administrative act has a dual purpose, on the one hand the purpose of notification, of knowledge by those affected that an administrative act has been issued that affects them and, likewise, a purpose of general knowledge on the part of the entire population. In these cases, the identification criterion must be the one established in the first paragraph of the first section of the seventh additional provision of the LOPDGDD, in order to guarantee that any person can have knowledge of it. Therefore, it will be carried out using the name and surname of the affected person by adding four random numerical digits of the number of the national identity document, the identity number

of a foreigner, the passport or an equivalent document, taking into consideration, for the determination of the four random numerical figures, the guidance referred to in letter a) of this Legal Basis IV.

This would be the case, for example, of personnel selection procedures. As a competitive competition procedure, the acts that make it up must be published and this will have the effect of notification, bearing in mind that the call for the procedure must indicate "the medium in which successive publications will be made" ( article 45.1.b LPACAP). At the same time, both the EBEP and Legislative Decree 1/1997, of 31 October, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in matters of public function, such as the Municipal and Local Regime Law of Catalonia, establish as guiding principles for access to public employment and the acquisition of the service relationship, the principle of publicity and transparency as a guarantee of the principle of equality. In this sense, the Judgment of the National Court, of April 26, 2012, highlighted that:

"(...)

In the present case, since it is a procedure of competitive competition we must attend to what is indicated in article 103 of the Constitution when it states that the Public Administration serves objectively the general interests and acts in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, with full submission to the law and the Law (paragraph 1) and when it states in paragraph 3 that "The law will regulate the status of public officials, access to public office in accordance with the principles of merit and ability (...)

From this point of view, we must conclude that the consent of those people who participate in a competitive competition procedure is not required for the treatment of the qualifications obtained in said procedure and it as a guarantee and requirement of the other participants to ensure the cleanness and impartiality of the procedure in which they concur

"(...)"

Consequently, it will be necessary to apply to these cases the mechanism for publication provided for in the first paragraph of the first section of the seventh additional provision, that is, through the name and surname of the affected person adding four random numerical digits of the number your national identity document, foreigner's identity number, passport or an equivalent document.

In short, the determining element for the application of one or the other of the mechanisms provided for by the first paragraph of the seventh additional provision of the LOPDGDD is the purpose pursued by the publication of the act, as it concerns the publication as a means of communication to those affected by the administrative act and integration of its effectiveness or, for other public purposes different from the previous one, in which the ultimate objective of the publication is to give publicity to the act, either for the purposes of transparency, control of administrative action, guarantee of participants in a public call, exemplary purpose, etc.

The analysis of the purpose pursued will determine, in each case, whether for the identification of those affected it is sufficient to indicate only the DNI number or whether it is necessary to publish the first and last names of

participants with the addition of four random numerical digits from the national identity document, the foreigner's identity number, the passport or an equivalent document.

v

The entity's Data Protection Delegate, in addition to the interpretation of the seventh additional provision of the LOPDGDD, proposes that they want to adopt "a single criterion on how to identify natural persons in the different administrative documentation they carry out, while preserving confidentiality and complying with current legislation" and asks if they could always use the criterion of identifying using only the NIF, since, as it states, from the human resources area "resolutions are generated and decrees are approved that they are not published in the official newspapers, but if they contain sensitive information from the point of view of privacy, and, in an organization with few employees, identifying with first and last name makes it easy to identify the person affected by the resolution".

It must be taken into account that the entity exercising its legitimate powers may carry out the processing of personal data of the interested parties that are relevant and appropriate to the purposes for which they have been obtained, in accordance with the legitimate bases on which these treatments are based. Therefore, the entity will be able to process the personal data of the interested parties in each of the procedures it carries out without having to apply, in principle, any mechanism to limit their identification, except when this data must be disclosed to third parties

As has been explained, the seventh additional provision of the LOPGDD provides for two different mechanisms for the identification of those affected, one for cases of publication of administrative acts that contain personal data and another with respect to the notification through the public

The determination of when to apply one identification system or another will be given by the purpose of the publication, consequently, the entity cannot adopt a single criterion for the identification of those interested in the publication of its administrative acts given that the LOPDGDD has expressly regulated two different mechanisms, and only in the event that the interested parties do not have a NIF, NIE, passport or equivalent document, the interested party can, in all cases, be identified solely with their name data and last names

Nor can a single criterion be established regarding the personal data that can be communicated as a result of requests for access to public information under the protection of transparency legislation.

The purpose of the Transparency Law is, as can be seen from article 1.2 of the LTC, to establish a system of relationship between people and the Public Administration and other obliged subjects, based on the knowledge of public activity, encouraging citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and responsibility in public management.

When the public information on which the request for access is made under the protection of transparency legislation contains personal data, it will be necessary, first of all, to analyze whether the data has the character of being specially protected, and otherwise, carry out a weighting between



the public interest in the disclosure of information and the data protection rights of those affected which data appear in the requested information. If the public interest prevails in the disclosure of the information, the rest of the principles established by the RGPD must be applied, including "data minimization" (art. 5.1.e) RGPD). The outcome of this process will determine whether and, if so, what identifying information can be provided. It will have to be a case-by-case analysis, although from the outset it is possible to advance that for the purposes of providing information under the protection of the right of access provided for in the transparency regulations, in principle it would not seem appropriate at first of minimization, that in those cases in which access to the identity of the affected persons must be provided, the first and last names and the number of the national identity document or equivalent document are provided together. In principle, it seems that it would be sufficient to provide the first and la

In accordance with the considerations made in these legal foundations in relation to the consultation raised by the entity's Data Protection Delegate on data protection in decrees and other resolutions, the following are made,

## Conclusions

The entity can carry out the processing of personal data that is relevant and appropriate to the purposes for which they have been obtained in the exercise of its powers and, in accordance with the legal bases on which they are based.

When the purpose of the publication has the effects of notification, the identification of the affected person must be done by means of the full number of his national identity document, alien identity number, passport or equivalent document.

When the purpose of the publication of the administrative acts is to give general publicity to the same and also when to this purpose is added the notification to the affected persons, the identification of the affected persons must be done by means of the first and last names adding four random numeric digits from your national identity document or equivalent.

Barcelona, March 5, 2019