Opinion in relation to the inquiry raised by a professional association regarding the retention of the data of members who deregister

A letter from a professional association (hereinafter, the Association) is presented to the Catalan Data Protection Authority regarding the retention of the data of members who deregister.

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The College begins its consultation letter by referring to its creation law and, specifically, to article 3 and the fourth transitional provision, which regulate incorporation into the College in the following sense:

> **"Article**
> **3 The College (...) groups university diplomas and diplomas in (...) or with a duly approved equivalent foreign degree. (...)"**
>
> **"Transitional provisions**
> **(...)**
> **Fourth**
> **Professionals who work in the field of (...), who fall within any of the three conditions detailed below, can be integrated into the College (...), who can reliably prove it and who request their authorization within eighteen months from the entry into force of this Law. (...)"**

It follows that the transitional period referred to in it ended on May 22, 1998, from which date only people in possession of an official university degree are admitted to the College corresponding

In addition to all this, the College points out that they have doubts regarding the processing of the data of their members, especially those with professional qualifications, once they are deregistered. For this reason, it poses the following questions to this Au

- **If it is possible to keep the files of the collegiate people given leave in case they one day apply for re-admission, taking into account that the skilled professionals do not have a university degree and that they possibly do not keep any document that indicates their qualification professional and collegiality.**

- **In the event that the deletion of the information of these people is appropriate, if it is possible to record in writing the fact that they were authorized and that they are currently on leave from the College.**

These issues are examined in the following sections of this opinion.

III

The Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD) has a set of principles that those responsible and those in charge of the treatment must 'observe in the processing of personal data.

Among these principles, it is worth highlighting, in view of the terms in which this query is formulated, the principle of limitation of the retention period, established in article 5.1.e) of the RGPD, according to which:

> **"1. The personal data will be:**
> **(...) e) maintained in a way**
> **that allows the identification of the interested parties for no longer than necessary for the purposes of the treatment of the personal data; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, without prejudice to the application of the measures appropriate technical and organizational techniques that this Regulation imposes in order to protect the rights and freedoms of the interested party ("limitation of the conservation period"); (...)".**

Regarding this, recital 39 of the RGPD provides that:

> **"(...) Personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, to guarantee that its retention period is limited to a strict minimum. Personal data should only be processed if the purpose of the treatment could not reasonably be achieved by other means. To ensure that personal data is not kept longer than necessary, the data controller must establish periods for its deletion or periodic review. (…)."**

It follows from these forecasts, for the purposes that concern them, that the person in charge must keep the personal data for the shortest possible time and that, in determining this retention period, the purpose for which requires the processing of the data, in such a way that, once reached, the personal data must be deleted.

However, the obligations to keep the data for a certain period of time that may establish applicable provisions must also be taken into account, so that, once these terms have been met, that is when the personal data must be deleted.

It should be noted, at this point, that, as provided by the data protection regulations themselves, deletion, when relevant, does not necessarily equate to the erasure or destruction of personal information, but to its blocking.

Specifically, Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereafter LOPDGDD), establishes that:

> **"Article 32. Blocking of data.**
> **1. The person responsible for the treatment will be obliged to block the data when it proceeds to its rectification or deletion.**

2. The blocking of the data consists in the identification and reservation of the same, adopting technical and organizational measures, to prevent its treatment, including its visualization, except for the provision of the data to judges and courts, the Ministry of Finance or the competent Public Administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the prescription period thereof. After that period, the data must be destroyed.
3. Blocked data may not be processed for any purpose other than that indicated in the previous section.
4. When for the fulfillment of this obligation, the configuration of the information system does not allow the blocking or an adaptation is required that involves a disproportionate effort, a secure copy of the information will be carried out so that there is digital evidence, or another naturaleza, which allows to prove the authenticity of the same, the date of the block and the non-manipulation of the data during the same.
5. The Spanish Data Protection Agency and the autonomous data protection authorities, within the scope of their respective powers, may set exceptions to the blocking obligation established in this article, in the cases where, given the nature of the data or the fact that they refer to a particularly high number of affected persons, their mere conservation, even blocked, could generate a high risk for the rights of those affected, as well as in those cases in which the conservation of the blocked data could involve a disproportionate cost for the person responsible for the treatment."

Therefore, in accordance with these precepts, personal data must be deleted once they are no longer necessary or relevant for the purpose for which they were collected or, where applicable, once the retention periods established by law, which will entail its conservation, duly blocked, during the limitation periods in which some type of liability derived from the treatment can be demanded.

Upon completion of this period, which may vary depending on the information processed and the responsibilities that may be generated, the personal information must be effectively deleted.

IV

This, transferred to the case at hand, leads to the following considerations.

It should be borne in mind that the determination of the appropriateness of retaining certain information about deregistered members and in what terms (either by blocking or even deleting information) should be done taking into account what established in the corresponding document evaluation table or tables that may be drawn up under the terms of Law 10/2001, of July 13, on archives and documents, modified by Law 20/2015, of July 29.

Law 10/2001 provides that public documents (in the terms of article 2.a)) are those produced or received in the exercise of their functions, among others, by public law corporations (article 6.1 .i)).

According to article 9 of Law 10/2001, "once the active and semi-active phases have been concluded, the evaluation regulations must be applied to all public documents, on the basis of which n determines conservation, for reasons of cultural, informative or legal value, or elimination. No public document can be removed if the regulations and procedure established by regulation are not followed."

It must be said, however, that, at present, there are no approved documentary evaluation tables referring, specifically, to the information subject to consultation.

In view of this, it is appropriate to agree, in accordance with the provisions of the RGPD examined, that the College will be able to keep the personal information it has of members who withdraw from the professional association as long as this results necessary or relevant to achieve the purposes to which its treatment responds.

Therefore, when establishing the retention periods for this information and deciding whether to proceed with its deletion (blocking) or not, the College must examine what data it has and for what purposes requires or may require them. And, for this purpose, it must take into account the functions that the regulations attribute to it.

Thus, it should be borne in mind that Law 7/2006, of May 31, on the exercise of qualified professions and professional associations, establishes that compulsory association qualified professional associations exercise a series of public functions, such as, among others, exercising disciplinary authority over members, ensuring that professional practice complies with regulations, ensuring the rights and compliance with the duties of members, or controlling the situations of intrusion and irregular professional actions (article 39). This, apart from the fact that, as entities with a private associative base, they can also carry out other activities of a different nature (article 40).

These same functions are included in the Statutes of the College.

Thus, as has been pointed out, if the personal data of the members who withdraw from the College may be relevant for the exercise of their functions provided for in the aforementioned regulations, they should be kept.

In the consultation, reference is made, specifically, to their file, which would include the set of information on these people. Despite not knowing what these personal data would be, it must be said that, in view of the functions of the College and the eventual purposes to which its treatment could respond, it does not seem that this should require the conservation of all the information available from the ·members who deregister and which is recorded in the respective files.

However, it may be necessary, for the exercise of its functions, that the College must retain, at least, that information of these people relating to the fact that a collegiality has existed, until and all, in the years that this association has lasted.

The profession of (...) is a qualified and collegiate profession, that is to say, for its exercise it is necessary to have a certain degree (or the corresponding professional qualification) and to be integrated into the coll· corresponding professional law, which entails submitting to the corresponding association rules (article 5 et seq. of Law 7/2006).

It belongs to the College, in accordance with the aforementioned regulations, to control compliance by professionals with the requirements for the exercise of the profession, as well as with their duties, among other functions (Law 7/2006 and article 8 Statutes).

It is understood that the College must have evidence of membership (existence) and its duration, among other reasons, because this is information that demonstrates compliance with the mandatory membership requirement by a specific professional. The convenience of the College treating and disposing of this information does not seem to have to disappear with the member's request to leave (or with an eventual exercise of the right of deletion provided for in article 17 of RGPD), given that its treatment is linked and based on the exercise of the functions assigned to the College by the aforementioned regulations, this is to be a guarantor of this

situation (that a certain person was registered for a certain time and that, therefore, met the requirements for the exercise of the profession).

In addition, it could be the case that a former member asks to be re-admitted to the College. In fact, the College expressly refers to this issue in its letter.

In accordance with article 15 of its Statutes:

> **"15.1 Reincorporation to the College will require the same rules as incorporation and the applicant must prove, if applicable, compliance with the penalty or sanction, when this was the reason for the termination.**
> **15.2 In the case of cancellation due to non-payment of fees or contributions, its payment, with the accrued legal interest, entails the automatic rehabilitation of the high school, except in the cases in which there is another reason for cancellation."**

Therefore, if a re-admission request is made, it seems clear that, in order to proceed with the registration of this former member again, the College must be in a position to process certain information of this person, such as the one relating to the existence of a previous association (which would presuppose compliance with the rules for joining the College in terms of the required academic qualification or professional qualification).

It could also be necessary, for these purposes, to have the member number, given the possibility that this will be maintained in the event of re-admission.

Therefore, it can be said that this type of information about members who withdraw from the College (existence and duration of membership, even member number) should be kept - if Therefore, it should not be deleted, in the sense of proceeding to its blocking or, where appropriate, effective elimination.

Having said that, it cannot be ruled out that in other cases it may also be necessary to keep other types of personal information about the members who have been terminated or, at least, about part of these members.

This could be the case, for example, of contact details and/or current account number. As set out in the Statutes (article 14.2), the loss of the status of a collegiate person does not release from the fulfillment of overdue obligations. Therefore, in order to enforce compliance with any obligations that may exist (for example, payment of fees), the College should be able to contact the former member, for which would need the identifying contact details, and, where applicable, the bank details, to make effective a possible collection of certain overdue fees.

In short, the situations presented show that, based on the applicable regulations (Law 7/2016 and Statutes), the College must be in a position to continue processing, at the very least, part of the information of the collegiate people who resign, which should, therefore, be preserved.

They also point out that this does not necessarily lead to having to keep all the information available (the complete file), nor to keep the same information in all cases of members who withdraw.

Therefore, as has been said, it is necessary for the College to examine which data of the deregistered members could be relevant for the purposes of being able to exercise the functions attributed to it by the regulations in order to be able to determine - its conservation or deletion.

Having said that, it should be noted that article 5.1.d) of the RGPD establishes the obligation of the person in charge to guarantee that the personal data they have are accurate and kept up-to-date, and to adopt all reasonable measures so that delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed (principle of accuracy).

For the purposes of complying with this obligation, and with respect to the information that must be kept, appropriate measures should be taken to ensure that the information that is kept of the members who have been terminated from the College is identified in an appropriate and separate manner of the information corresponding to the rest of the registered persons in a situation of discha

This would facilitate a correct management of the information of these people deregistered by the College, which, it should be remembered, could only be treated for the purposes of being able to exercise the functions attributed to it by the regulations, in the terms noted above . In other words, you should refrain from carrying out any other treatment inherent to the condition of a professional in a situation of discharge.

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

The College must keep the information it has on the deregistered members as long as it is necessary for the exercise of the functions legally attributed to it and, in any case, the information relating to the existence of the association and its duration.

Barcelona, March 18, 2019