

Opinion in relation to the consultation of a professional association on the delivery of a list of members to a person who wants to run in the association elections

A letter from a professional association is presented to the Catalan Data Protection Authority in which it considers whether it can deliver a list of affiliated persons, with an indication of their contact details, to an affiliated person interested in participating in the elections to the Board of Governors of the College.

A copy of the College Statutes is attached to the consultation, among other documents.

Having analyzed the request and the documentation that accompanies it, and having seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The Association raises, in its letter of inquiry, several questions related to the possibility of giving a list of members to one of the members who has an interest in contesting the elections to the Board of Governors. In summary, the College proposes:

a) If the conclusions of the opinion issued by this Authority on date 9 are confirmed of July 2012. b)

If, in case the delivery of the list is considered appropriate: -

What data and in what format should be communicated, taking into account that there are different classes of registered persons and that the Registered Register -legal has data accessible to the public and other private data.

- If it is necessary that, prior to the delivery of the list, the applicant's candidacy has been announced.

We refer to these issues in the following sections of this opinion.

III

The College considers, first of all, whether the conclusions issued in the opinion of 9 July 2012 (CNS 31/2012, available on the Authority's website <https://apdcat.gencat.cat>) are confirmed.

This opinion, issued by the Authority at the request of this same College, analyzed the possibility of communicating by email a list of members to a candidacy for the college elections in which the name, number of member, address and email of the members, for the purpose of sending them electoral information.

Having done this examination, in accordance with the applicable sectoral legislation and the legislation on data protection in force at that time (this is Organic Law 15/1999, of December 13, on the protection of personal data, and its Deployment Regulation, approved by Royal Decree 1720/2007, of December 21), it was concluded that:

"The information relating to the name, membership number, professional address and e-mail of the members can be considered a source accessible to the public. However, and beyond the obligation to provide information on the name and surname, membership number and professional address in the single window of the professional association, there is no obligation to provide the requested information with the requested format.

It is fully respectful of the right to data protection the possibility provided in the statutes of the college to carry out the transmission of electoral information during the electoral campaign through the secretariat of the same college."

In general, it can be said that these conclusions remain valid, in the sense that:

- Certain data of registered professionals must be disseminated by the professional associations through their single window, which means that anyone can have access to it, including the registered professionals themselves.**
- The sectoral regulations do not imply the obligation, as such, to deliver a list with the data of the members in the form, in that case, requested by the candidacy, that is by email.**
- The system provided for in the Statutes of the College for sending electoral information is fully respectful of the right to data protection of those who may be affected.**

Having said that, the concurrence of certain circumstances, such as the time that has passed since the aforementioned opinion was issued, the legislative changes in the field of data protection, with the approval of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD) and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter , LOPDGDD), the modification in 2015 of the Statutes of the College, as well as the particularities of the specific case now raised, advise to re-examine the intended treatment.

IV

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), defines data processing as "any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (article 4.2).

The delivery of a list of affiliated persons, including their contact details, to one of the affiliated persons who is interested in contesting the elections to the Board of Governors constitutes processing of personal data that remains subject to data protection legislation.

The RGPD establishes that all processing of personal data must be lawful, fair and transparent (Article 5.1.a)). In order for this treatment to be lawful, one of the legal bases of article 6.1 of the RGPD must be met:

"a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures; c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment; d) the treatment is necessary to protect the vital interests of the interested party or another natural person; e) the treatment is necessary 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; f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child."

It must be taken into consideration that, as is apparent from article 6.3 of the RGPD and expressly included in article 8 of the LOPDGDD, data processing can only be considered based on the legal bases of article 6.1 .c) and e) of the RGPD when so established by a rule with the rank of law.

v

In the context in which we find ourselves, reference must be made to Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations.

This law refers us, specifically with regard to the electoral regime, to the provisions established in the Statutes of the College.

Thus, once it has been established that the internal organization and operation of the professional associations must be democratic (article 45), it provides as the minimum necessary content of the Statutes "the name, the convocation and constitution regime, the composition and the functioning of the governing body; the way to appoint, dismiss and renew their members, and the duration of their mandate, in accordance with article 51.1." (article 47.e)).

In the case examined, the Statutes of the College contain several provisions that refer to the participation of members in the Board of Governors and the electoral system.

Among them, special mention should be made of article 33, which, under the heading "electoral campaign", establishes certain provisions in relation to the sending of electoral propaganda for candidacies.

Section 3 of this article provides that "once the approval of the Electoral Board has been obtained, through the secretary of the College, the material received from each candidacy, including a copy of the program, as well as any other common and equal electoral material for all the candidacies that is considered necessary for voting".

In view of this provision of the Statutes, which contemplates a specific system for sending electoral information by post during the electoral campaign (through the College secretariat), a priori it would not seem necessary that the different candidatures should have access to personal information of members for this purpose, either the electoral roll or a list such as the one requested, in the case presented, by the member.

It should be remembered, at this point, that the RGPD has given a letter of nature to the principle of data minimization (article 5.1.c)), according to which "personal data will be adequate, relevant and limited to what is necessary in relation to fines para los que son tratados" or, what is the same, only data processing that is necessary or provided for the purpose that motivates them must be carried out.

In this way, if the purpose pursued in a certain context (in our case, the sending of electoral information) can be achieved without the need to carry out the processing of personal data, without this being altered or harmed purpose, this possibility should necessarily be chosen, given that the processing of personal data implies, as enshrined by the Constitutional Court in its Judgment 292/2000, a limitation of the right of the affected person to dispose of the information referring to his person.

However, in view of the provisions of section 5 of the aforementioned article 33 of the Statutes, it cannot be ruled out that the candidates must be able to access certain information of the members for the purposes of sending them electoral information .

In accordance with this section "the sending to the postal address of all electors by the College of the documentation relating to the electoral material provided for in section 3 above and of the envelopes in section 4 of article 28 is free of charge. Only one shipment of electoral material for each candidate is free. Applications are recommended to be submitted by email. If one or more candidatures want to make more than one shipment to the collegiate people, the expenses incurred will be borne by the candidacy that makes it."

This section provides, in addition to the sending by postal mail established in section 3, that candidatures can use e-mail. In fact, in this section "candidates are recommended to submit by email". Obviously, candidates will not be able to follow this recommendation made by the College itself if they do not have information on the members with voting rights.

In accordance with article 32.3.a) of the Statutes, the data relating to the email must be part of the electoral roll, together with the first and last names, the member number and the professional address of the persons legions

It is worth remembering, at this point, that the RGPD considers lawful the processing of data that is "necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that the interests or rights do not prevail over said interests and fundamental freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child" (article 6.1.f)).

According to recital 47 of the RGPD "the legitimate interest of a person responsible for the treatment, including that of a person responsible to whom personal data may be communicated, or of a third party, may constitute a legal basis for the treatment, provided that the interests or the rights and freedoms of the interested party, taking into account the reasonable expectations of the interested parties based on their relationship with the person in charge. (...). In any case, the existence of a legitimate interest would require a meticulous evaluation, including whether an interested party can reasonably foresee, at the time and in the context of the collection of personal data, that the treatment for that purpose may occur

Taking into account that the personal information of the members is requested by a member who intends to run in the elections to the Board of Governors, its delivery by the College could be subject to the provision of article 6.1.f) of the RGPD, being

necessary for the satisfaction of legitimate interests, as long as the fundamental rights of the members are not violated.

However, in order for this to be possible, it is necessary that the Electoral Board has proclaimed the candidacy of which the requesting collegiate person is a part, since it is in the candidacies that the concurrence of an interest can be recognized legitimate

In this sense, it must be borne in mind that access to voter data during electoral processes, as would happen in the case examined, would find its justification in the guarantee of the faculties that the regulations applicable to the process in question recognize in the candidates during the electoral process, including carrying out the electoral campaign, including sending electoral propaganda.

An example of this, although in the present case it cannot be considered directly applicable, are the provisions of article 41.5 of Organic Law 5/1985, of June 19, on the general electoral regime. This precept expressly recognizes the possibility for candidates to obtain a copy of the electoral roll for electoral purposes in the following terms:

"The representatives of each candidacy will be able to obtain within the two days following the announcement of their candidacy a copy of the census of the corresponding district, ordered by table, in a format suitable for computer processing, which may be used exclusively for the purposes provided for in this Law. Alternatively, the general representatives may obtain, under the same conditions, a copy of the current census of the districts where their party, federation or coalition presents candidacies. Likewise, the District Electoral Boards will have a copy of the usable electoral census, corresponding to their area. (...)".

At the same time, it should be borne in mind that, in the case examined and in accordance with the statutory provisions examined, the personal information that should be given to the candidates would include the name and surname of the persons enrolled together with their email address electronic, not the totality of the data contained in the electoral roll or those others that the College may have in its Register of members (for example, the postal address or the DNI), the disclosure of the which could have a greater impact on the privacy of the people affected.

These circumstances should be accompanied by the establishment by the College of measures aimed at safeguarding the rights and interests of members, such as an opt-out system so that they can decide directly, without the need without any other justification, be excluded from the list that is given to candidates for the purposes of carrying out electoral propaganda e-mails.

For all that, it can be said that the delivery of a list of members to the requesting member, once his candidacy has been announced, could be considered as part of the satisfaction of interests legitimate and, therefore, a treatment covered by the legal basis of article 6.1.f) of the RGPD.

Point out, in view of the specific issues raised in the consultation letter, that the list to be given to the candidates should include, in the present case, the name, surname and email address and refer only to the members with voting rights, in accordance with what is established in the Statutes (article 31).

Also that the data protection regulations do not establish specific forecasts in relation to the specific way to carry out the delivery of personal data. It's a

decision that corresponds, therefore, to the College as responsible for the treatment (article 4.7) RGPD).

However, it is recommended that candidates agree that said information can only be used for the specific purpose for which it was given, that is its use during the electoral process as a mechanism to facilitate communication between the candidates and the rest of the collegiate persons during the electoral campaign period and the exercise of their powers during the electoral process (Article 5.1.b) RGPD, relating to the principle of purpose limitation).

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

Conclusions

The delivery of a list of members with the right to vote in the elections to the Board of Governors, containing their name, surname and email address, to the person who requested it, once their candidacy has been proclaimed, for the purposes of sending them electoral information by email, would find protection in the legal basis of article 6.1.f) of the RGPD.

On the other hand, given the provisions of the Association's Statutes regarding the sending of electoral propaganda by post, it would not be justified to provide it with other contact details, such as the postal address, of the members.

Barcelona, October 8, 2019