

CNS 34/2020

Opinion in relation to the inquiry made by a professional association on the publication of members' data.

A request for an opinion from a professional association on the publication of members' data is submitted to the Catalan Data Protection Authority.

In the consultation it is stated that "as a semi-public entity it must publicize the data of the members within the framework of the professional exercise, in accordance with the current regulations (...)".

Regarding the publication of this data, the following inquiries are made to the Authority:

"1. What are the collegial register data of practicing members, non-practicing members and registered professional societies that must be published on the collegiate website.

Currently, the data of practicing members are published in the mentioned Single Window, according to the aforementioned regulations, which are: first and last name of members, association number, official titles they hold, professional address and professional qualification status.

The issue arises since most of the time the professional address and the personal address provided by both practicing members and non-practicing members is the same.

2. When a third party requests data from the College via telephone or email, can the data be provided? And if it is affirmative, what data can be given?

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

I

(...)

II

The Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD) defines the treatment of personal data 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.” (article 4.2 RGPD), has submitted to the principles and guarantees established by that Regulation.

The RGPD defines personal data as: “all information about an identified or identifiable natural person (the “data subject”); 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; (Article 4.1 GDPR).

Therefore, the publication of the members' data in the collegial register, to which the query refers, is data processing that must be subject to the principles and guarantees of the RGPD.

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency).

In order for a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD:

- 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. (...)

In the field of public administrations, the legal bases provided for in letters c) and e) of article 6.1 of the RGPD are of particular interest, according to which the treatment will be lawful when it is necessary for the fulfillment of 'a legal obligation applicable to the controller (letter c), or when the treatment is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the controller (letter e).

Professional associations are "corporations under public law, endowed with their own legal personality and with full capacity to act for the fulfillment of their purposes, which are configured as

instances of management of public interests linked to the exercise of a certain profession and as a vehicle for the participation of the members in the administration of these interests, without prejudice to the fact that they can carry out activities and provide services to the members in a regime of professional associations (article 35 of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations). From this public perspective, the aforementioned legal bases provided for in letters c) and e) of article 6 of the RGPD will also be of particular interest.

However, as can be seen from Article 6.3 of the RGPD, the legal basis for the treatment indicated in both cases must be established by European Union Law or by the law of the Member States that applies to the person responsible for treatment.

The referral to the legitimate basis established in accordance with the internal law of the member states requires, in the case of the Spanish State, in accordance with article 53 of the Spanish Constitution, that the rule of development, to be about a fundamental right, has the status of law.

In this sense, article 8 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights establishes the legal scope of the enabling rule.

Law 2/1974, of 13 February on Professional Associations, in its article 10 imposes on collegial organizations the creation of a single window on their web pages in order to provide members with a centralized point where you can access the procedures with your school and at the same time in section 2 imposes on them the obligation to publish certain useful information for consumers and users, in the following terms:

"2. Through the mentioned single window, for the better defense of the rights of consumers and users, the collegial organizations will offer the following information, which must be clear, unambiguous and free:

a) Access to the Register of Associates, which will be permanently updated and which will contain, at least, the following data: number and surnames of the affiliated professionals, membership number, official titles of those in possession, professional address and status of professional qualification.

b) Access to the register of professional societies, which will have the content described in article 8 of Law 2/2007, of March 15, on professional societies.

c) The avenues of complaint and the resources that may be interposed in case of conflict between the consumer or user and a collegiate or the professional college.

d) The data of the associations or organizations of consumers and users to which the recipients of the professional services can go to obtain assistance.

e) The content of the ethical codes."

In the same sense, Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, regulates this obligation in article 40 bis which establishes:

"1. The professional associations must facilitate through the single window the formalities and procedures relating to free access to service activities and their exercise so that the professionals can carry out all the necessary formalities electronically and remotely and know the processing status of the procedures in which you have the status of interested party. information useful for the best defense of the rights of consumers and users must also be provided through the single window.

2. In any case, professional associations must guarantee access through a single window to the following information:

a) Access to the register of members, which must be up-to-date, containing the following information: first and last names of registered professionals, membership number, official titles, professional address. (...)"

The publication of the members' data is, therefore, a lawful treatment covered by article 6.1.c) of the RGPD in relation to the aforementioned articles of the state and Catalan laws on professional associations.

Also, letter e) of article 6.1 of the RGPD (the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person responsible for the treatment), could also constitute a basis legitimate processing of the personal data necessary for the development of functions entrusted to the professional associations in the aforementioned rules.

Apart from this, it should be borne in mind that article 19.3 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (LOPDGDD), in relation to sections 1 and 2 of the same article, enables public law corporations, when the purposes of the treatment are related to the exercise of public law powers (article 77.1.g) and it is necessary for the exercise of their powers, to publish the data of contact of liberal professionals necessary for their professional location and as long as the purpose is linked to this professional activity.

Accordingly, although article 10.2.a) of Law 2/1974 and 40.2.a) of Law 7/2006 do not expressly refer to other professional location data such as telephone or email , the aforementioned provisions of article 19 LOPDGDD would enable the publication of this data.

III

With regard to the publication of the information of the professional societies to which the query also refers, it must be taken into account, as has been explained, that the RGPD extends its scope of protection to personal data understood as all information on an identified or identifiable natural person (Article 4.1 of the RGPD).

The data of legal entities are therefore excluded from this scope of protection, as specified by the RGD itself, establishing that "the protection granted by this Regulation must be applied to natural persons, regardless of their nationality or your place of residence, in relation to the processing of your personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details. (Recital 14)

Therefore, in principle, the information that professional associations must publish on their website about professional societies remains outside the scope of GDPR protection.

However, article 10.2.b) of Law 2/1974 establishes that through the single window it will be necessary to give access to the register of professional societies with "the content described in article 8 of Law 2/2007, of 15 of March, of professional societies". And article 8.2 of Law 2/2007, of March 15, on professional societies, establishes the content of the registration in this register in the following terms:

"2. In the registration, the mentions required, if applicable, by the regulations in force for the registration of the corporate form in question, those contained in article 7.2 and, at least, the following points:

- a) Name or company name and domicile of the company.
- b) Date and identifying summary of the public deed of incorporation and authorizing notary; and duration of the company if it had been established for a certain period of time.
- c) The professional activity or activities that constitute the corporate purpose.
- d) Identification of the professional and non-professional partners and, in relation to them, membership number and Professional Association of membership. e) Identification of the persons who are in charge of administration and representation, expressing the status of professional partner or not of each of them."

From what is established in this rule, it follows that among the data to which access must be given, through a link to the register of professional societies, there will be the identification of the professional and non-professional members of the professional societies. And in the case of professional members, the association number (article 8.2.d). Access must also be given to the identification of the people in charge of the administration and representation of these companies, indicating whether they have the status of professional partner or not (article 8.2.e).

In addition, as in the case of the professionals we referred to in the previous legal basis, it is also necessary to take into account article 19 LOPDGDD, which enables the publication of "the contact details and in their case those relating to the function or puesto desempeñado de las personas físicas que presten servicios en una persona jurídica" by public law corporations when the purposes of the treatment are related to the exercise of public law powers (article 77.1.g) of the LOPDGDD) by the exercise of its powers, as long as the requirements are met that the treatment refers only to the data necessary for its location

professional and that the purpose of the treatment is solely to maintain relations of any nature with the legal entity in which the affected person provides his services.

Therefore, the processing of personal data referred to in letters d) and e) of article 8.2 of Law 2/2007, of March 15, on professional societies by professional associations will also have as legal basis letters c) and e) of article 6.1 of the RGPD, in relation to Law 2/1974, of 13 February on Professional Associations and article 19 LOPDGDD.

IV

In this context, and in order to answer the first of the queries, it must be said that from the point of view of the personal data protection regulations, there is authorization for the publication of the data of practicing members provided for in article 10.2 of Law 2/1974 and 40 bis of Law 7/2006, and which include in any case:

- Name and surname of the registered professionals
- Membership number
- Official titles you have
- Professional domicile
- Professional room situation

To this data can be added, as we have seen, other data for the professional location of the members, such as the data relating to the telephone or email.

All this without prejudice to the fact that, in the event that the professionals provide other data and consent to their publication, these other data may also be included that may be relevant for the better defense of the rights of consumers and users.

With regard to the data of non-practising professionals (people who are members of a professional association but are not exercising the activity at that time), the regulations of professional associations do not distinguish between one and another type of association - registered. It establishes that the register of collegiates must contain the information of collegiate professionals without any distinction. Therefore, information relating to registered professionals must be published, regardless of whether they are practicing or not, as long as the data relating to their non-practising status is also provided.

With regard to the question of the possible coincidence of the personal address and the professional address, it is a question that the professional must assess at the time of providing his professional address, but that in any case, given the terms of the 'legal obligation to publish the professional address, cannot be excepted due to the fact that it coincides with the private address.

In any case, however, it will be necessary to take this into account when the professionals are informed about the treatment that will be given to their data. Thus, article 13 of the RGPD regulates the information that must be provided when the data is obtained from the interested party, among this information, letter c) of the first section establishes that it is necessary to inform "the purposes of the treatment to which the personal data is intended and the legal basis of the treat

In order to comply with this rule, the professional association, at the time of collecting the member's data, must inform him of which of the data he provides will be made public in the register of members and the legal basis for this treatment, as well as the possibility to oppose it, in the event that your personal situation justifies the non-publication of this data (art. 21 RGPD).

Finally, with regard to the data of partners, professionals and non-professionals, and the people in charge of the administration and representation of professional societies, it will be necessary to give access to the information that must be published in accordance with the article 8.2 of Law 2/2007, of March 15, on professional societies, and also to the professional location data referred to in article 19 LOPDGDD.

IV

The second question raised refers to the possibility of providing data when a third party requests it from the College by telephone or email, and if so, what data can be provided.

In the case at hand, as has been explained, there is a legal obligation that imposes on professional associations the publication of certain information regarding their members in the register of members and in the register of professional associations, which must be made public in the single window that can be accessed, without any identification process, through the College's website.

Therefore, from the point of view of data protection regulations, no impediment should exist to provide this information when it is requested by a third party, either by telephone or by email. In both cases, the information that can be provided that contains personal data must be limited to that contained in the aforementioned records and the purpose for which it can be used must be related to the provision of the person's professional services what is it about

Conclusions

Under the protection of the analyzed legislation, the College can publish the information contained in the Register of members, practitioners and non-practitioners, consisting of first and last name, association number, qualification, professional contact details (professional address, telephone, e-mail ...) and professional room situation.

With regard to members, professionals and non-professionals, of professional societies, it is necessary to give access to their identification, and, where applicable, the association number and professional Association of aff Regarding the people in charge of the administration and representation of these companies, access to their identification data can be given. In both cases, professional contact details can also be published.

The data protection regulations do not prevent the publication of the member's personal address when it coincides with the professional address, without prejudice to the duty to inform the affected professionals in advance and the possibility that they oppose the disclosure of this data when your personal situation justifies it.

The personal data protection regulations do not prevent the personal data of professionals that can be accessed through the Single Window from being communicated to third parties who request them by telephone or email.

Barcelona October 7, 2020

Machine Translated