

CNS 37/2020

Opinion in relation to the consultation formulated by the Council of professional associations, on requests for deletion of personal data.

A letter from a Council of professional associations is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on requests for deletion of personal data.

Specifically, the query refers to the request of a colleague who has been terminated, who would have requested *"the deletion of all data from our BBDD (...)."*

The consultation considers that *"the suppression would apply, prior blocking of the data to comply with the possible requirements on the part of the competent authorities and organisms."*

The consultation takes into account the possibility of more requests for the deletion of personal data, and therefore requests the issuance of an opinion to the Authority.

Analyzed the query, which is not accompanied by other documentation, and seen the report of the Advisory Board Legally, the following is ruled:

I

(...)

II

Among the principles of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), it is worth highlighting the principle of limiting 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 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, according to recital 39 of the RGPD: "(...) *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 be achieved reasonably 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. (...).*"

Article 17 of the RGPD provides that:

"1. The interested party will have the right to obtain without undue delay from the controller the deletion of the personal data concerning him, who will be obliged to delete without undue delay the personal data when any of the following circumstances:

a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed; b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis; c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2; d) personal data have been treated unlawfully; e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;

f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1. (...)."

It follows from this that the data controller (art. 4.7 RGPD), in this case the Council, must keep personal data for the shortest possible time and that, in the determination of this retention period, the purpose for which the processing of the data is needed must be taken into account, in such a way that, once the purpose has been achieved, the personal data must be deleted.

This is applicable to any processing of personal data carried out by the Council, in relation to its functions, either in relation to colleagues or other natural persons.

However, we agree that in any case it will also be necessary to take into account the obligations to retain data for a certain period of time that may establish applicable provisions, in such a way that, once these terms have been met, that is when the personal data will have to be deleted
yes

On the other hand, 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, article 32 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD), establishes the following:

"1. The person responsible for the treatment will be obliged to block the data when proceed to its rectification or suppression.

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 indicated in the previous section.

4. When for the fulfillment of this obligation, the configuration of the system of information does not allow the blocking or an adaptation is required that involves a disproportionate effort, a secure copy of the information will be made so that there is digital evidence, or of another nature, that allows to prove the authenticity of the same, the date of the blocking and the non-manipulation of data during the same.

(...)."

Therefore, 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 have ended, which will result in its blocking 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.

III

The conservation by the Council of certain information of natural persons, specifically of the members, and in what terms (either by blocking or even deleting information), should be determined taking into account what established in the corresponding document evaluation table or tables that can be drawn up under the terms of Law 10/2001, of July 13, on archives and document management, modified by Law 20/2015, of 29 July, to which the query mentions.

According to article 3.1 of Law 10/2001:

"The scope of application of this Law forms all the documents of public ownership of Catalonia, the private documents that make up or can make up the documentary heritage

Catalan, the archives located in the territorial area of Catalonia and the administrative bodies that support them."

Article 6 of Law 10/2001 provides that, for the purposes of this Law, those produced or received in the exercise of their functions, among others, by private corporations under public law, are public documents (art. 6.1.i)).

In accordance with article 9 of Law 10/2001: *"Once the active and semi-active phases have been concluded, to apply to all public documents the evaluation regulations, on the basis of which determines conservation, for reasons of cultural, informative or legal value, or elimination. none public document cannot be removed if the regulations and procedure established by regulation are not followed."*

It must be said, however, that, according to the information available (<http://taad.cultura.gencat.cat>), there is no record of the existence of approved documentary evaluation tables referring, specifically, to the information subject to consultation.

In view of this, in consideration of the regulatory provisions examined, the Council may retain the personal information it has of the persons involved as long as it is necessary or relevant to achieve the purposes to which its treatment responds, taking into account their functions

Therefore, when establishing the terms of retention of this information and determining its deletion (blocking of the data) or not, the person in charge must examine which data it processes and for which purposes it is required or may require them.

Given that the query refers to the fact that the requesting person, a member, would have requested *"the deletion of todos sus datos de nuestra BBDD del Consell"*, it is necessary to take into consideration the functions that the regulations attribute to the Council.

Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, aims to *"regulate the exercise of qualified professions in the territorial area of Catalonia and professional associations, the professional associations and the councils of professional associations that exercise their activity there."* (art. 1 Law 7/2006).

Article 60.1 of Law 7/2006 establishes the functions of the Councils of professional associations, among others, exercising the general representation and defense of the profession in the area of Catalonia and the coordination of professional associations that integrate them (section a)), draw up the rules relating to professional practice and the disciplinary regime common to the profession (section b)), ensure that the action of the professional associations conforms to the rules that regulate the exercise of the profession i so that the collegial action conforms to the principle of equal opportunities between women and men so that no type of discrimination occurs (section f)), among others. The Councils of professional associations may also carry out other activities of a private nature, especially in relation to the promotion, creation and organization of services and benefits in the interest of professional associations and registered professionals (art. 60.4 Law 7/2006).

These functions are specified in article 4 of the Council's Statutes:

"1. The Council is assigned the following public functions:

- a) Exercise the general representation and defense of the profession (...).
 - b) Elaborate the rules relating to professional practice and the disciplinary regime common to the profession.
(..).
 - e) Mediate in the conflicts that may arise between the colleges (...) or, where appropriate, resolve them through arbitration, and exercise disciplinary functions in relation to the members of the governing bodies of the colleges read (...).
(...).
 - i) Resolve the resources over which it has jurisdiction in accordance with the Law and its Statutes.
 - j) Exercise the disciplinary functions that correspond to him in accordance with the law and its Statutes.
 - k) To promote, create and organize institutions, services and activities of interest to the profession that aim to promote culture, social and health assistance, cooperation and mutualism, and all the services that are needed and that are of interest to schools (...).
(..).
2. The Council can exercise those functions that, for reasons of efficiency, the colleges can delegate to it, after signing the corresponding intersubjective delegation agreement.
(...)."

Article 16 of the Council's Statutes provides the following:

"The Council is assigned disciplinary jurisdiction in the following cases:

- a) To sanction the offenses committed when the person holds a government position in a school.
- b) To sanction people who have a position of representation or government in the Council, but in this case they will not be able to take part in the deliberations or vote in the meetings."

Therefore, the Council exercises the functions attributed to it by the regulations, and can also exercise functions that the Colleges may delegate to it (art. 4.2 Statutes).

For the purposes that concern, if the personal data of the members who withdraw may be relevant for the exercise of the functions of the Council (for example, in the exercise of the sanctioning powers of the Council, ex. art. 16 of the Statutes of the Council, among others), the Council must keep this information about the member.

In short, the Council must keep the relevant information for the purposes of its own functions, such as the exercise of its disciplinary power or, where appropriate, for the functions delegated to it by the Colleges that are part of it. The information that the Council must keep in accordance with its powers, should not be deleted, in the sense of proceeding to its blocking or, where appropriate, effective elimination.

In any case, it would be necessary to take into account, for these purposes, the principle of minimization (art. 5.1.c) RGPD), in order to keep only the appropriate, relevant data. The preservation must not necessarily lead to having to preserve all the information available on the affected person, but only that which is relevant in regard to the purpose of the treatment.

Therefore, it is necessary for the Council to examine which data of the persons requesting the deletion 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.

All this, without prejudice to the processing of data that must be done by the Colleges that are part of the Council (art. 57.1 Law 7/2006), with respect to their members. In this case, the interested person should contact the respective school, which would be the one that would have to attend to their deletion request with respect to the data available to that specific school. In this regard, we note that this Authority has analyzed the deletion of data of persons enrolled by professional associations on previous occasions (Opinions CNS 20/2013, CNS 53/2015, and CNS 13/2019, which can be consult the Authority's website: www.apdcat.cat). The last of the aforementioned Opinions is of particular interest, given that it refers to the application of the RGPD, which is the rule in force that regulates the set of principles and guarantees that those responsible for the treatment must observe in the treatment of personal data.

We also note that the consultation cites the Guide relating to the processing of personal data by professional associations, of this Authority, which must necessarily be interpreted in accordance with the current regulatory framework for data protection (RGPD and LOPDGDD).

IV

Having said that, it should be remembered that the person responsible for the treatment must always give an answer to any person, in particular, to any member who exercises a right to delete data, regardless of whether or not the requested deletion is justified, in the terms that have been noted. Faced with data deletion requests that may be unclear in their wording, the Council may ask the interested party to clarify or specify the scope of the deletion and the reasons why it considers that their data should be deleted. This definition could allow the Council, as responsible, a more precise analysis when considering whether the deletion of the member's data is justified and should succeed, or whether it is appropriate to deny the deletion of the data.

Article 5.1.d) of the RGPD establishes the obligation of the person in charge to ensure that the personal data they have are accurate and kept up-to-date, and to take all reasonable measures to have them deleted or rectified without delay personal data that are inaccurate with respect to the purposes for which they are processed (principle of accuracy).

For the purpose of complying with this obligation, and with respect to the information that the Council must keep, appropriate measures should be taken to ensure that the information that is kept of the deregistered members is properly identified and separate from the corresponding information to the rest of the collegiate people that the Council has to deal with for its functions.

This would facilitate a correct management of the information of these people deregistered by the Council, which, it should be remembered, could only be used for the purposes of being able to exercise the functions attributed to it by the regulations. That is to say, the Council should refrain from carrying out any other treatment inherent to the status of a professional in a situation of discharge.

In accordance with the considerations made in these legal bases in relation to the consultation on data deletion requests received by the Council, the following are done,

Conclusions

Personal data must be deleted once they are no longer necessary or relevant for the purpose for which they were collected or, if applicable, once the retention periods established by law have expired. The deletion must lead to the blocking of the deleted data during the limitation periods in which some type of liability derived from the treatment can be demanded.

Barcelona, November 2, 2020