

CNS 45/2020

**Opinion in relation to the query made by an entity about the personal data of the interested parties that must be published for the purposes of notification of administrative acts in the procedures for the granting of subsidies.**

**Background**

A query from the executive director is presented to the Catalan Data Protection Authority of an entity, on the personal data of the interested parties that must be published for the purposes of notification of administrative acts in the procedures for granting subsidies.

In the consultation it is stated that the entity is a public law entity of the Generalitat of Catalonia, which adjusts its activity to private law, linked to the competent Department for Universities and Research, and that in accordance with the regulations of creation corresponds to the call, management, resolution and payment of scholarship programs, aid and subsidies, among others.

After mentioning the main regulations and instructions on which the publication of the personal data of the interested parties in relation to the subsidized activity of the entity, the consultation refers to the conclusions of the opinions of this Authority CNS 56/2017 and 4/2018, on the consultation formulated by the same entity in relation to the publication of the data of beneficiaries of grants granted.

Finally, in the consultation, reference is made to the Seventh Additional Provision of Organic Law 3/2018, of December 5, Protection of personal data and guarantee of digital rights, which regulates the identification of those interested in notifications through advertisements and publications acts administrative and to the orientation of the APCAT of March 4, 2019 of orientation criteria for the provisional application of the Seventh Additional Provision of the aforementioned Law until the time when the governing bodies and competent public administrations approve provisions for the application of the aforementioned Seventh Additional Provision.

Taking into account this regulatory framework, the entity requests the opinion of the Authority on the table that it incorporates into the consultation that collects the personal data of the interested parties that it publishes on the e-board, the DOGC and the BOE with the purpose of notifying certain administrative acts in the different phases of the procedure for managing a call. It also asks that they be formulated recommendations and guidelines to comply with current regulations on data protection, for the purposes of notification of administrative acts in grant awarding procedures.

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

## Legal Foundations

I

(...)

II

The AGAUR requests the APDCAT's opinion regarding the processing of personal data in the notifications of the administrative acts of the calls for scholarships, grants and subsidies that it manages. As indicated in your query, the entity has drawn up a table that aims to define for each phase of the procedure for managing a call, the personal data that must be included in the notifications they publish, whether on the Generalitat's electronic board whether in the DOGC or the BOE.

The consultation refers to the opinions of this Authority CNS 56/2017 and CNS 4/2018 which can be consulted on the APDCAT website, [www.apdcat.cat](http://www.apdcat.cat). The first of these opinions analyzed the publication of the data of the beneficiaries of aid and subsidies and their compliance with data protection regulations. Specifically, with respect to which were the identification data of the beneficiaries (name and surname and/or NIF) that had to be published in the framework of two actions with different purposes. The first, referring to the publication of these beneficiaries on the electronic board of the Administration for the purposes of notification of the resolution to the persons interested in the procedure for granting the corresponding aid or subsidy, and the second, referring to the publication of the beneficiaries on the corporate website, for the purposes of complying with the obligations of publicity and transparency.

The conclusions of this opinion for the purposes that now concern us, that is to say the publication of personal data for the purposes of notification of the administrative acts of the calls managed by the entity, show that:

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*The administrative procedure legislation would enable the publication of the names and surnames of the persons applying for the grants granted for the purposes of achieving the purpose of notification in the course of the concession procedure, if this is provided for in the call. In the event that there was a coincidence of names and surnames between the contestants, the last four digits of the NIF of the affected persons could be published."*

In the second of these opinions (CNS 4/2018), which is formulated as a clarification to the previous consultation, the possibility raised by the AGAUR to publish the name and surname together with the four digits of the NIF or number of ID card or equivalent document of all aid beneficiaries, not only for the purposes of complying with the purpose of notification of the resolution within the framework of grant awarding procedure, but also for transparency purposes.

In this case the opinion issued on the day concludes as follows:

*"The publication of the name and surname together with the last four digits of the NIF or ID number of all the beneficiaries of aid and subsidies for the purposes of achieving the purpose of notification of the resolution, when so provided for in the call, would be justified in the case*

*of the existence of a high risk of coincidence of first and last names between the contestants, a risk that will have to be assessed based on the volume of applications processed in the respective call.*

*On the other hand, adding the four digits of the NIF or DNI number, to the name and surname of the beneficiaries would not be an additional guarantee for the purposes of the public being able to identify these people and therefore, would not be justified for the purposes of fulfilling the purpose of transparency*

*With regard to the publication of the data of people who have been denied aid or have been excluded, their identification can be done by means of the NIF or DNI number. On the other hand, in the case of people who are on reserve lists, they would need to identify themselves with their first and last names, and if applicable the last four digits of the NIF or DNI number, following the same criteria as that "applies to the people who are beneficiaries."*

It is worth saying that the conclusions of both opinions, with regard to the publication for the purpose of notification of the administrative acts of the calls for subsidies, must be updated in the light of the provisions of the Seventh Additional Provision of the Organic Law 3/ 2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereafter LOPDGG), as analyzed in this opinion.

### III

First of all, it must be emphasized that the differentiation made in the table provided by the entity regarding the notifications of the administrative acts of the call between natural persons and legal persons is considered correct.

It should be taken into consideration that Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD) extends its scope of protection to personal data understood as: *"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;* (Article 4.1 GDPR).

The data of legal entities are therefore excluded from this scope of protection, as specified by the RGPD 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)

However, this protection does cover the data of individual entrepreneurs and representatives of legal entities, whose treatment must be carried out in accordance with data protection regulations.

Thus, in accordance with the RGPD, any 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, deletion or destruction."* (article 4.2 RGPD), has submitted to the principles and guarantees established by that Regulation.

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 that legitimizes this treatment, either the consent of the person affected, or any of the other circumstances which provides for the same precept. 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).

As can be seen from Article 6.3 of the RGPD, the legal basis of 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 the 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 (hereafter LOPDGG) establishes the legal scope of the enabling rule.

Article 45 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC hereafter), provides:

*"1. The administrative acts will be subject to publication when the regulatory rules of each procedure establish it or when it is recommended for reasons of public interest appreciated by the competent body.*

*In any case, the administrative acts will be subject to publication, giving effect to the notification, in the following cases:*

*a) When the act is addressed to an indeterminate plurality of persons or when the Administration considers that the notification made to a single interested party is insufficient to guarantee the notification to all, being, in this last case, additional to the one made individually.*

*b) When it comes to acts that are part of a selective or competitive procedure of any kind. In this case, the call of*

***procedure must indicate the medium where the successive publications will be made, lacking validity those that are carried out in different places.***

*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 will also apply to the publication.*

*In the case of publications of acts that contain common elements, the matching aspects may be published together, specifying only the individual aspects of each act.*

*3. The acts will be published in the corresponding official newspaper, according to the Administration of which the act to be notified is proceeding.*

*4. Without prejudice to the provisions of article 44, the publication of acts and communications that, by legal or regulatory provision must be carried out on notice boards or edicts, will be understood as completed by their publication in the corresponding Official Journal."*

In accordance with this precept, and as long as it is a call under competitive competition (articles 94 TRLFPC and 22 LGS), the administration would be empowered to publish the concession resolution, if so provided for in the call, which is the one that must indicate the medium where the successive publications will be made. All this, without prejudice to the possible restrictions on publication derived both from the LGS itself and from the application of the RGPD.

Thus article 20.8 letter b) of LGS provides that the regulations governing the call may restrict publication when it may be contrary to the respect and safeguarding of the honor, personal or family privacy of natural persons, in application of Organic Law 1/1982, of May 5, on civil protection of the right to honor, personal and family privacy and one's image.

For its part, the first paragraph of article 9 of the RGPD prohibits the processing of special categories of data, and only allows it if, in addition to the authorization provided for in article 6.1 of the RGPD, it is given any of the circumstances of article 9.2 of the RGPD.

It should also be taken into account that article 15 of Law 19/2014, of December 29, on transparency, access to information and good governance, has provided that *"In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved"*.

This article expressly provides for the preservation of the identity of the beneficiaries of those subsidies and public aid granted for reasons of social vulnerability. This limitation must be applied in any case, since the dissemination of this data entails, from the point of view of data protection, a very direct impact on the right to privacy of these people, and its application only to publications that have a purpose of transparency would frustrate the protection provided by the transparency regulations.

This publication, like any other treatment of personal data, must be carried out in accordance with the rest of the principles established in data protection legislation and, in particular, with the principle of minimization (Article 5.1.c) RGPD), according to which *"the data*

*personal will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".*

#### 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 to publish the identifying data of the people interested.

To determine which are the identifying data of those affected that are considered appropriate and relevant in the publication of administrative acts and in notifications by means of announcements, the 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 it will be necessary to distinguish:

a) When the publication of the administrative act containing personal data obeys a purpose of publicity or general knowledge by any person, the identification of those affected must be done in accordance with what is established in the first paragraph of the first section of the Provision

Additional Seventh, that is, through the name and surname of the affected person adding four random numerical digits of the number of their national identity document, foreigner's identity number, passport or an equivalent document.

b) When the purpose of the publication is only the notification of the administrative act to the interested person, the second paragraph of the first section 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 must 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, that there are cases in which the publication of the administrative act has a double purpose: on the one hand, the purpose of notifying those affected that an administrative act has been issued that affects them and, likewise, on the other hand, a purpose of general knowledge by 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 be aware of it. Therefore, it must be carried out using the name and surname of the person affected by adding four random numerical figures from the number of the national identity document, the foreigner's identity number, the passport or an equivalent document,

In short, the determining element for the application of one or the other of the mechanisms provided for by section 1 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 other public purposes different from the previous one, in which the ultimate objective of the publication is to give publicity to act for the general knowledge of the citizenry.

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 it is necessary to publish the first and last names of the participants with the addition of four random numerical figures from the national document identity card, the foreigner's identity number, the passport or an equivalent document.

With regard to the determination of the four random numbers referred to in the seventh Additional Provision LOPDGDD, it should be remembered that, provisionally until the rules for the deployment of the said Additional Provision are approved, the data protection authorities have proposed Guidance [https://apdcat.gencat.cat/ca/documentacio/guies\\_basiques/Guies-apdcat/](https://apdcat.gencat.cat/ca/documentacio/guies_basiques/Guies-apdcat/) for the provisional application of protection guarantees for the disclosure of the national document, foreigner's identity number, passport or equivalent document of the interested parties and, for this purpose, they have randomly determined the group of four numbers that must be published for the identification of the interested parties in the publication of administrative acts.

Specifically, based on the random selection of the group of four numerical figures that must be published for the identification of those interested in the publication of administrative acts, the recommendation includes the following procedure for its application:

*"The publication of a national identity document, foreigner's identity number, passport or equivalent document can be done as follows:*

- *Given a DNI with format 12345678X, the digits that occupy the fourth, fifth, sixth and seventh positions in the format will be published. In the example: 4567 \*\*.*

- *Given a NIE with format L1234567X, the digits that occupy the positions in the format will be published, avoiding the first alphabetic character, fourth, fifth, sixth and seventh. In the example: 4567 \*.*

- *Given a passport with format ABC123456, having only six digits, the digits that occupy the positions in the format will be published, avoiding the three alphabetic characters, third, fourth, fifth and sixth. In the example: 3456.*

- *Given another type of identification, as long as this identification contains at least 7 numeric digits, these digits must be numbered from left to right, avoiding all 2 alphabetic characters, and the procedure will be followed to publish those numeric characters that occupy the fourth, fifth, sixth and seventh positions. For example, in the case of an ID like: XY12345678AB, the publication would be: \*\*\*\*\*4567\*\*\*.*

- *If this type of identification is different from a passport and has less than 7 numeric digits, all characters, including alphabets, must be numbered with the same procedure as above and those that occupy the last four positions will be selected. For example, in the case of an ID like: ABCD123XY, the post would be: \*\*\*\*\*23XY.*

*Alphabetic characters, and those numeric characters not selected for publication, will be replaced by an asterisk for each position.*

*The provisional criterion proposed by the authorities that subscribe to this guidance also aims to try to avoid that the adoption of different formulas in application of the aforementioned provision could lead to the publication of numerical figures of the identification documents in different positions in each case, enabling the complete recomposition of these documents.*

*For this reason, they recommend that the proposed formula be applied in a general way".*

v

With respect to the table provided by the entity relating to the publication associated with calls for scholarships, grants or other types of subsidies, it will be necessary to analyze the application of what is provided for in the Provision Additional Seventh of LOPDGDD in each case.

a) Amendments to applications:



In the above-mentioned table, a phase called "*Diligence of amendments to the application*" is distinguished, in respect of which the publication, with regard to physical persons, of the following data is foreseen: "*Identify with name and surnames and the 4 masked digits of the NIF/NIE/PASSPORT, in accordance with the provisional recommendation. In the case of a request for special categories of data, only identify with NIF/NIE/PASSPORT*" Regarding this same procedure, with regard to legal entities, it is foreseen: "*Identify in all cases with the name and CIF of the institution, and if there is the name and surname of the candidate/responsible person and the 4 masked digits of the NIF/NIE/PASSPORT), in accordance with the provisional recommendation*".

In this case, the purpose of the publication is to notify the interested parties which applications are incomplete or incorrect and the corresponding request to amend the application. Therefore, in this case, the publication is a means of communication to those affected by the administrative act and integration of its effectiveness. There is, therefore, no purpose of general knowledge.

Consequently, if the publication of the notifications of the amendment requirements of the applications is provided for in the basis of the call, it would be necessary to apply what is established in the second paragraph of the first section of the seventh additional provision of LOPDGD, of in such a way that it would be sufficient to publish the number of the national identity document, the foreigner's identity number, the passport or an equivalent document of the person concerned.

If the request to amend the application affects special categories of data, the entity provides for the identification of the interested parties with the *NIF/NIE/PASSPORT number* of the interested person. It must be taken into account, however, that the first paragraph of article 9 of the RGPD prohibits the processing of special categories of data, and only allows it if, in addition to the authorization provided for in article 6.1 of RGPD if any of the circumstances of article 9.2 of the RGPD occur. In the case at hand, it does not appear that there is an authorization for the publication of special categories of data for notification purposes in calls for subsidies.

When, depending on the object of the call or the amendment to be carried out, the no. of DNI with a special category of data, the call should provide for the notification of this amendment procedure by other notification systems that do not entail the disclosure of this information (it should be borne in mind that the publicity regime in the matter of grants is essential in the award decision but in a procedural act of this nature it may be disproportionate in conflicting with the right to the protection of personal data) or, if publication is essential for notification purposes, limit - to indicate the existence of the notification and the mechanism by which the full content of the act can be received, as provided for in article 46 of LPAC.

It should be noted that the fact of using only the DNI number, NIF or other identifier does not imply any guarantee of anonymity, since these are considered personal data, although it may seem that the use of a numerical identifier such as are the DNI and the NIF can in some way make it difficult to identify the affected person, it must be borne in mind that the identification remains possible without requiring disproportionate efforts.

b) Scholarships and grants awarded:

Secondly, the table identifies the publication on the e-TAULER of the grants "GRANTED (provisionally or definitively) / RESERVE LIST", in this case it is foreseen: "Identify with first and last name and the 4 masked digits of the NIF/NIE/PASSPORT, in accordance with the provisional recommendation", (for natural persons), and "Identify in all cases with the name and CIF of the institution, and if there is the name and surname of the candidate/responsible person and the 4 masked digits of the NIF/NIE/PASSPORT), in accordance with the provisional recommendation" (for legal entities).

The publication of the resolution with the beneficiaries in a competitive competition process has a dual purpose, both notification to interested parties and general knowledge. Consequently, the application of the first paragraph of the first section of the Seventh Additional Provision of the LOPDGDD is considered correct, and the consequent identification of the interested parties through the publication of the name and surname together with the 4 digits of the national document of identity, foreigner's identity number, passport or an equivalent document following the criteria of the provisional recommendation of the data protection authorities referred to.

In the same way, it is necessary to proceed for the identification of the people on the reserve list. It should be borne in mind that to the extent that they are people to whom the requested aid could end up being awarded, if the call foresees its publication, it is necessary to opt, as the entity has rightly done, by the same criteria as is used to identify the beneficiaries.

It should be noted that, with regard to legal entities, the table provides for the identification, in addition to the beneficiary institution, of "the candidate/responsible person". However, according to the LGS, only the beneficiaries of the subsidies must be made public, in this case the beneficiary legal entity.

c) Requests denied, excluded or withdrawn

Thirdly, the table identifies the publication in the e-TAULER of: "OTHERS (Refused, withdrawn, excluded), in this case it is foreseen: "Identify with first and last name and the 4 digits masks of the NIF/NIE/PASSPORT, in accordance with the provisional recommendation", for natural persons and, "Identify in all cases with the name and CIF of the institution, and if there is the first and last name of the candidate/responsible person and the 4 masked digits of the NIF/NIE/PASSAPOR, in accordance with the provisional recommendation" for legal entities.

It must be taken into account that, to the extent that the purpose of this publication is produced within the framework of the procedure so that the affected person can be aware of the existence of a administrative act that affects you, which must be notified to you because you have given up your application, have been excluded or have not been a beneficiary, we would find ourselves with a publication whose sole purpose is to notify the interested parties and, not a general knowledge purpose. Consequently, in this case what is established in the second paragraph of the first section of the Seventh Additional Provision of LOPDGDD would apply, so that it would be sufficient to publish the number of the national identity document, the number of foreigner's identity card, the passport or an equivalent document of the interested person, the considerations formulated in section a) being applicable.

d) Publication in official newspapers of unsuccessful notifications

Finally, the table has a section relating to the publication in the official bulletins (DOGC, BOE) of *"unsuccessful notifications"* in which case it is foreseen to *"Identify with the NIF/NIE/PASSPORT"* for natural persons, and *"Identify in all cases with the name and CIF of the Institution, and if there is one, the NIF/NIE/PASSPORT of the candidate/responsible person"*, for legal entities.

Article 44 of the LPAC provides that in cases of unsuccessful notifications, the notification must be made by means of an announcement published in the BOE. In the same sense, the third additional provision of the LPAC is pronounced, which in any case provides for the publication of an announcement in the BOE for the practice of unsuccessful notifications that occur within the framework of procedures that have specific regulations, still which can be carried out beforehand and optionally in the manner that it establishes.

In these cases, the purpose of the publication is to notify the interested parties and, as the entity's table shows, the natural persons interested should be identified in accordance with the second paragraph of the first section of the Seventh Additional Provision of LOPDGDD, as set out in letter a).

## **Conclusions**

The identification of the persons interested in the publication of the administrative acts in the procedures for granting subsidies, in accordance with the Seventh Additional Provision of the LOPDGDD, must be determined based on the purpose of the publication.

When the publication has the purpose of general publicity of the administrative act, the identification of the interested parties must be done with the first and last name together with the 4 digits of their national identity document, the foreigner's identity number, the passport or an equivalent document (following for the determination of the 4 figures, the criteria of the Provisional Guidance approved by the data protection authorities).

When the publication of the administrative act has the sole purpose of notifying the interested persons, their identification must be done with the number of their national identity document, the foreigner's identity number, the passport or an equivalent document.

Barcelona, January 7, 2021