

**Opinion in relation to a consultation on the identification of interested persons who hold the status of victim of gender violence in the various publications of the personnel selection procedures**

A letter is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the identification of interested persons who hold the status of victim of gender violence in the various publications of the selective procedures of staff

Specifically, the following questions are formulated:

- a) If women who prove by any of the legally provided means that they are victims of gender violence have the right not to have their data published in the various lists that are approved in a selection process.
- b) If so, if this protection should be extended to all publications of the process, especially in the following publications:
  - The provisional and final lists of admitted and excluded persons.
  - The distribution lists of applicants for classrooms/spaces where the test will be held.
  - The list of eligible, ineligible and non-presented applicants, and qualifications exercise/test
  - The assessment of the merits of applicants who have passed the exercise/test.
  - Publication of the scores of the opposition and opposition competition phases/the list of people who have passed the opposition competition in order of score.
  - The proposal of applicants for the selective course.
  - The appointment of the candidates who have passed the selection process (where the name, surname, position number in the process, allocated position, organizational unit, day, hours and location of the position are reported in alphabetical order).
- c) If the use of the ID code is valid for these purposes.
- d) What would happen if a person were assigned with an ID code, either in a process with little participation or in the appointment with the allocated position, which would allow the specialty of their condition to be deduced. And if it was not done with ID code, what system should be used.

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

I

(...)

II

At the outset, it should be noted that this Authority has had the opportunity to examine in previous opinions (for example, in opinions CNS 45/2020, CNS 5/2019 or CNS 4/2019, available on the website <https://apdcat.gencat.cat/ca/inici>) the way to proceed, from the point of view of personal data protection, in the identification of those interested in notifications by means of announcements and publications of administrative acts.

In particular, it is necessary to highlight the considerations made in CNS opinion 5/2019, in which this issue is examined with respect to personnel selection procedures, an issue to which this consultation refers, albeit with a particularity, given that in the present In this case, what should be the criterion to be applied when the people who take part prove that they are victims of gender-based violence.

In the following sections of this opinion, this issue is examined, as well as the specific doubts raised in the consultation.

### III

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), establishes that the processing of personal data, understood 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 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"*, it must be submitted 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).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based. In the field of public administrations, the legal bases provided for in letters c) and e) of this precept 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 responsible of the treatment"* (letter c), or when *"it 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"* (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.

In the case we are dealing with, the legality of the treatment (publication of data) is given by the provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), and the regulations current in the field of public service.

Article 45 of the LPAC 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, with the effect of 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 only 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 for the procedure must indicate the medium where the successive publications will be made, lacking validity if they 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 personnel selection procedures, as competitive competition procedures, the acts that make it up must be published and this will have notification effects, in accordance with the provisions of article 45.1.b) of the LPACAP, bearing in mind that the call for the procedure must indicate *"the medium in which successive publications will be made"*.

Such procedures are governed by the principles of publicity and transparency. In this sense, the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee (EBEP) (applicable as established in the article 2.1.b) to civil servants and, where applicable, to labor personnel of the Government of the Generalitat), establishes these principles in article 55, where it is foreseen that:

*"1. All citizens have the right to access public employment in accordance with the constitutional principles of equality, merit and capacity, and in accordance with the provisions of this Statute and the rest of the legal system.*

*2. The Public Administrations, entities and organisms referred to in article 2 of this Statute will select their official and labor personnel through procedures in which the above constitutional principles are guaranteed expressed, as well as those established below:*

*a. Publicity of calls and their bases.*

*b. **transparency***

*(...)."*

In the same way Legislative Decree 1/1997, of 31 October, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in matters of public function, provides that the Administration of the Generalitat selects all its staff with objective criteria, based on the principles of equality, merit and capacity of the applicants, and through a public call (article 42).

In the development of these rules, and with regard to the application admission phase, Decree 28/1986, of January 30, on the Staff Selection Regulations of the Administration of the Generalitat of Catalonia, establishes that the resolution of the same must be published in the DOGC and that it must indicate the place where the complete certified lists of admitted and excluded applicants are exposed to the public, with an indication of a period of ten days for amendments and possible claims. Also that once 15 days have passed since the expiry of this term, the final lists of admitted and excluded will be made public by the same procedure (article 22).

To point out, at this point, that from the point of view of data protection and under the prism of the principle of minimization (Article 5.1.c) RGPD), according to which *"personal data will be adequate, relevant and limited to what is necessary en relation con los fines para los que son tratados"*, it would be sufficient with the publication of admitted applicants, however there is an express provision in the rule that enables the publication of the list of excluded candidates as well.

Article 24 of Decree 28/1986 also provides that, for each test, the list of passers by score order must be made public. Also that, once the tests are finished, the list of those who passed will be made public in order of score. And, in accordance with Article 26, the appointments must be published in the DOGC.

It should be borne in mind that, at this stage of the procedure, unlike the application admission stage, the rule only provides for the publication of the lists of applicants approved. In this case, from the point of view of data protection, the principle of minimization of the data would prevent the publication of the lists of suspended candidates.

In short, the principle of publicity in personnel selection procedures, in accordance with these provisions, imposes on the body in charge of carrying out the obligation to publicize the process and its regulatory bases, of the lists of the people admitted (and excluded) to the selection process, the score obtained in the different phases of the process by the approved applicants, the final qualification of the participants and the final result of the process, among others.

These legal obligations must be specified in the regulatory bases that must be determined how the selection process will be carried out, given that, as the Supreme Court's jurisprudence has reiterated (the STS of May 27, 2010 can be cited for all), the basis of the call *"constitutes the law in that the procedure and resolution of the same must be subject"*.

On the other hand, it is also necessary to take into account the transparency regulations which, among other aspects, provide for the publication of the results of the selective processes, provision and promotion of personnel (article 9.1.e) of Law 19/2014, of December 29, of transparency, access to public information and good governance (LTC)).

For all that, from the point of view of data protection, the dissemination of data of the people who participate in a selection procedure as a result of the various publications that, in accordance with the applicable regulations, must be carried out results in lawful data processing on the basis of articles 6.1.c) and e) of the RGPD.

#### IV

However, this publication (or publications), 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), previously cited.

To determine which are the identification data of the affected persons that are considered appropriate and relevant in the publication of administrative acts and in the notifications by means of announcements, it is necessary to bear in mind what is established in the seventh Additional Provision of the LOPDGDD, which establishes the following criteria:

*"Seventh additional provision. Identification of those interested in notifications by*

*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, he will identify himself by means of his name and surname, adding four random numerical digits from the national identity document, foreigner's identity number, passport or equivalent document.*

*When the publication refers to a plurality of those affected, these random figures must be alternated.*

*When it comes to **notification through advertisements**, particularly in cases referred to in article 44 of Law 39/2015, of October 1, of Common Administrative Procedure of the Public Administrations, the affected person will be identified exclusively by means of the full number of his national document of*

*identity, foreigner's identity number, passport or equivalent document.*

*When the affected person lacks any of the documents mentioned in both*

*previous paragraphs, the affected person will be identified only by their number and last name. In no case should the number and surname be published together with the full number of the national identity document, foreign identity number, passport or equivalent document.*

*2. In order to prevent risks for **victims of gender-based violence**, the Government will encourage 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 matter."*

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 for general publicity, or it is a consequence of the need to make a notification through announcements (to one or more interested parties) of an administrative act and, in particular, as a consequence of an "unsuccessful" notification provided for in the article 44 of the LPAC.

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 seventh Additional Disposition, this is through the name and surname of the person affected by adding four random numerical digits of the number of his national identity document, the alien identity number, the passport or a document equivalent

For the determination of these four figures, as a provisional criterion until there is one regulatory deployment of this aspect that allows the provisions of this paragraph to be applied with full guarantees for the right to data protection, this Authority considers that the right can be guaranteed by applying the guidance that, jointly, they have adopted the Spanish Data Protection Agency, the Basque Data Protection Agency and the Andalusian Data Protection and Transparency Council, and this Authority. This guidance can be found in the Authority at the following link: <https://apod.gencat.cat/ca/autoritat/normativa/disposicions/recomanacions/>.

The joint adoption of this guiding criterion aims to avoid the adoption of formulas different in application of the aforementioned provision may give rise to the publication of figures numbers of the identification documents in different positions in each case, enabling the complete recomposition of these documents.

b) When the purpose of the publication is only the notification of the administrative act to the interested person, the identification must be made in accordance with what is established in the second paragraph of the first section of the seventh Additional Provision, this is through the full number of your national identity document, alien identity number, 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) Other cases in which the publication of the administrative act has a dual 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 for the entire population. In these cases, the identification criterion must be that established in the first paragraph of the first section of the seventh Additional Provision, in order to guarantee that any person can have knowledge. Therefore, it must be done using the name and surname of the person concerned, adding four random numerical figures from the number of the national identity document, the foreigner's identity number, the passport or an equivalent document.

This last assumption (letter c) is what occurs in the selective procedures, in which the publication of the identification data of the participants in the process, through their inclusion in the different acts that make up the process (the different lists to which mention the consultation), is necessary for the achievement of the objectives of publicity and transparency as guarantors of the principle of equality of the selective procedure but, at the same time, the publication has the purpose of notifying the act to the interested parties participate in said process (article 45.1.b) LPAC).

Therefore, in general, in these cases, the identification criterion must be that established in the first paragraph of the first section of the seventh Additional Provision of the LOPDGDD, according to which the identification of the participants in the different publications within a personnel selection process that needs to be carried out will be carried out by means of the name and surname of the affected person adding four random numerical digits of the number of the national identity document, the foreigner's identity number, the passport or an equivalent document, in accordance with the Guidance approved by this Authority together with the other data protection authorities, to which reference has been made.

Remember that, from the point of view of data protection, the principle of data minimization would prevent the publication of the identifying data of those people who do not approve or do not pass the selective process.

All of this unless, as is the case in the present case, this publication may harm the rights or legitimate interests of the participants.

## V

In the consultation, express mention is made of the identification of the participants who attest to the status of victims of gender violence in the selection procedures, without any further details regarding the effects of the attestation of this status.

Next, the consultation explains the way in which this identification is carried out in the different publications of the selective procedures when it comes to applicants with

the legal condition of disabled, with a degree equal to or greater than 33%, considering whether this system could also be applied when it comes to women who are victims of gender violence.

Point out that, although we are dealing with two vulnerable groups whose personal data require special protection, the concurrent circumstances differ in each case. And this, from a data protection point of view, could lead to different solutions.

It should be borne in mind that, with respect to people with disabilities, the civil service regulations provide that in the public employment offers of the Public Administrations a percentage of the places offered must be reserved so that they are filled by people with disabilities ( article 59 EBEP and article 27 Legislative Decree 1/1997).

Accreditation of the legal condition of disability is necessary to be able to participate in this round of reservation of places and, in this case, once the selection process has been passed, they have the preferential right to choose the vacancies, if applicable, in the respective turn, in the event that the assignment of places is made by the order of points obtained in the selective system, and in accordance with what is provided by the opinion of the multiprofessional team regarding their capacity to develop the functions of the jobs subject to the call (article 8 Decree 66/1999, of March 9, on access to public service for people with disabilities and multiprofessional assessment teams).

From the point of view of data protection, the confidentiality of the identity of these people in the development of the selective process aims to protect the dissemination of their disability status, as it is data relating to the health that requires special protection (Article 9 RGPD).

In the case of victims of gender-based violence, the regulations applicable in Catalonia have not provided for a reserve shift for access to public service for this group, nor any preferential right in the choice of position once the selection procedure has been passed with respect to the rest of the participants (this without prejudice to the mobility mechanisms, as provided for in article 82.1 of the EBEP). People who prove they are victims of gender-based violence participate in the selection procedures under the same conditions as other applicants.

The accreditation of this condition does not respond to the same until the previous assumption (it is not a requirement to be able to opt for a hypothetical reserve shift), but, as we will see, to an objective of guaranteeing the personal safety of applicants in the development of the selection procedure by the acting administration.

Taking into account these circumstances, it is necessary to examine which criterion should be followed in the identification of these people in the publication of the different acts that make up the selection process.

In this regard, reference must again be made to the seventh Additional Provision of the LOPDGDD, which, in its second section, provides that *"in order to prevent risks for victims of gender-based violence, the Government will promote the development of a **protocol of collaboration that defines safe procedures for the publication and notification of administrative acts**, with the participation of bodies with competence in the matter."*

At the date of issuance of this opinion, there is no evidence that the protocol referred to in this provision has been drawn up.

Even so, it must be taken into account that the application of the principle of data minimization, in its aspect of proportionality (Article 5.1.c) RGPD), would in any case oblige the body that publishes the administrative act to have present the special data protection needs of some

collectives, as is the case with victims of gender violence, and consequently to avoid its dissemination.

Point out that Organic Law 1/2004, of December 28, on comprehensive protection measures against gender-based violence, provides that *"in actions and procedures related to gender- **based** violence, the privacy of the victims will be protected; **in particular, his personal data, those of his descendants and those of any other person who is under his care or custody"** (article 63.1).*

This same provision is included in article 82.1 of the EBEP, relating to the mobility due to gender violence and due to terrorist violence of public employees.

At the same time, Law 5/2008, of April 24, on the right of women to eradicate gender-based violence, establishes, as a guiding principle in the interventions of the public authorities, *"the active commitment to **guarantee the protection of the data of personal character of women in situations of violence (...)"** (article 7.1).*

Given this, and thus answering the specific doubts raised in the consultation, it can be said that it is necessary to preserve the confidentiality of the personal data of the participants who are victims of gender violence at all times, that is to say, from the first publication to be carried out in the selection procedure. This implies avoiding both the publication of data that allows the identification of the affected person, either directly or indirectly, and that could generate a risk for their personal security, as well as other unnecessary data (for example, the fact that the person is victim of gender violence).

Point out that the mere fact of disclosing the participation of a person who is a victim of gender-based violence in a certain selection procedure - which would occur with the mere publication of the list of people admitted to the process, to the extent that this person appears identified by their first and last name together with the last 4 digits of the DNI or equivalent document - it would generate a risk for that person. And this because it would make it possible to know or deduce their participation in the tests that follow, or in the case of the appointment, the destination assigned

At this point, it is appropriate to mention article 46 of the LPAC, according to which:

***"If the competent body appreciates that the notification by means of announcements or the publication of an act infringes rights or legitimate interests, it will limit itself to publishing in the corresponding Official Journal a **brief indication of the content of the act** and the place where the interested parties can appear , in the time that is established, for knowledge of the full content of the aforementioned act and proof of such knowledge.***

*Additionally and on an optional basis, the Administrations may establish other forms of complementary notification through the rest of the media that will not exclude the obligation to publish in the corresponding Official Journal."*

This precept of the LPAC highlights the need, on the part of the acting administration, to adopt the appropriate measures so that when the publication of an act may affect the rights and legitimate interests of the interested party - as happens in this case with the participants who are victims of gender violence - this publication is carried out in a manner effective without infringing such rights.

In the consultation, it is considered whether, for the purposes of guaranteeing the adequate protection of the data of people who are victims of gender violence in the different publications of the selective procedures, an ID code can be used in place of the first and last name, as is done with applicants with the legal status of disabled.



This system, as stated in the consultation, consists in the assignment to the participating person of an identification code (ID code) at the time of submitting the application for participation, which, apart from the acting administration, he only knows the affected person.

Specifically, the query refers to *"whether the use of the ID code is valid for anonymization"*.

At this point, it should be clarified that we are in any case facing a process of pseudonymisation of data, not anonymisation.

By anonymization is meant the processing of data that breaks the chain of identification of the affected person for all actors (including the acting administration, responsible for the treatment), so that the data can no longer be attributed to an identified or identifiable natural person (consideration 26 RGPD).

On the other hand, in accordance with article 4.5) of the RGPD, pseudonymization means *"the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information is separately and is subject to technical and organizational measures aimed at ensuring that personal data are not attributed to an identified or identifiable natural person."*

Through this technique, it is intended to guarantee greater respect for the privacy of the affected persons, given that its application to personal data allows to reduce the risks associated with its treatment for the affected persons. This is how it is done in recital 28 of the RGPD:

*"The application of pseudonymization to personal data can reduce the risks for the interested parties and help those responsible and those responsible for the treatment to fulfill their data protection obligations"*.

Pseudonymization therefore becomes a relevant technique in the context of data protection by design, allowing the data controller to guarantee more secure data processing, as well as compliance with the rest of the protection requirements of data

The use of pseudonymised data, such as the aforementioned ID code, is an appropriate solution to guarantee compliance with the principle of data minimization in the various publications of the minutes of personnel selection procedures (lists of admitted candidates, results of tests and final result of the process) when the information they contain affects groups that require special protection. Therefore, it could also be used with respect to those applicants who attest to the status of victims of gender violence, as long as this does not prevent the achievement of the purpose to which the publication of the act responds.

Now, beyond the list of admitted people and in the publication of the test results, doubts are raised in the consultation as to whether this ID code can be used in the publication of the resolution appointing the victims of violence of gender

The publication of the appointment of the people who have passed the selection process is a condition for the effectiveness of the act (article 39 LPAC), as contained in the Judgment of the Superior Court of Justice of Catalonia of November 29, 2012 (rec 330/2011). In accordance with Decree 28/1986, this publication must be carried out in the DOGC, without specifying in this rule the way in which the person to whom the appointment refers must be identified.

As we have seen, such identification should be made with the name and surname together with the last 4 digits of the DNI or equivalent document of the named person. However, following from the point of view of the principle of data minimization, in the publication of the appointment - as in the publication

of the rest of the lists in the selection process - the special circumstances of people who are victims of gender-based violence cannot be ignored, which forces us to take to the extreme the data confidentiality guarantees that allow the your identification

Opt, for these purposes, for other identification systems other than the first and last name, such as the mentioned ID code or any other code that allows the identification of the named applicants without revealing their identity to anyone who accesses the publication, would minimize the risks to the security of the people affected, so proceeding in this way would not raise problems from the point of view of data protection.

In fact, this option is usually common in the appointments of members of the bodies and security forces, another collective in which, as in the present case, in order to guarantee their safety, it is considered justified to identify them in the publication of the appointment resolution through the professional identification number in place of your first and last name. See in this regard, for example, Resolution INT/1486/2020, of 23 June, on the appointment of civil servants in the category of police officer of the basic scale of the Generalitat's Police Force body.

In the consultation, doubts are also raised about the advisability of using this ID code to identify the person who is a victim of gender-based violence in the publication of the appointment when it comes to processes with little participation or when the awarded position is recorded, given that this would allow us to deduce the specialty of his condition.

From the point of view of data protection, there would also be no disadvantages in using this identification system in the above cases. Although the inclusion of this code can certainly reveal, even if indirectly, the existence of a situation of special vulnerability that has entailed preserving the identity of one or more people in the publication of the act, this would be an inevitable consequence if the safety of these people is to be guaranteed.

In any case, please note that, in the event of publishing through an ID code, given the limited retention period of the information that is part of the selection procedure and specifically of the application for participation submitted, which would include the ID code (TAD 16), it would be necessary to remain evidence - with appropriate security measures - of the link of the affected person with the ID code used, given that at least during the entire working life it must be possible to have evidence of the publication of the appointment.

It could also be appropriate for the basis of the call for selection procedures to state that, in order to protect the physical integrity of applicants who claim to be victims of gender-based violence, no personal information will be published, only a code that will be assigned personally to each of them and that will serve as identification throughout the entire selection process.

In accordance with the considerations made so far in relation to the proposed query, they are made next,

## **Conclusions**

Applicants who prove that they are victims of gender-based violence have the right to the protection of their personal data in the various publications of the selection procedures in which they participate.

To make this protection effective and until the protocol referred to in section 2 of the seventh Additional Provision of the LOPDGDD is approved, the identification of these people by assigning the ID code referred to in the query would be appropriate to the data protection regulations.

Barcelona, February 18, 2021

Machine Translated