

CNS 10/2021

Opinion in relation to the query made by a professional association on the processing of the data of non-practicing members

A request for an opinion from the president of a professional association on the processing of the data of non-practicing members is submitted to the Catalan Data Protection Authority.

In the consultation, it is stated that they have doubts regarding the opinion CNS 34/2020, specifically regarding the application of article 19 of the Organic Law 3/2018, to non-executive members since, as indicated, "they are individual people who belong to the collective and are not performing functions as entrepreneurs or professionals."

In this context, he requests a report from the Authority "to be clear about the concepts regarding the application of CNS Opinion 34/2020 in the following situations of members, in the publication of data both in the Single Window and in provide the data when a third party requests the data from the College via telephone or email: 1. Non-practicing members 2. Non-practicing members in a situation of incapacity due to retirement or invalidity 3. Members given leave or death and details of the heirs."

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

In the conclusions of opinion CNS 34/2020 issued by this Authority as a result of the consultation carried out by the Professional Association on the publication of the members' data, the following was established:

"Under the protection of the analyzed legislation, the College can publish the information contained in the Register of members, practicing and not practicing, consisting of first and last name, registration number, degree, professional contact details (professional address, phone, email...) 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 affiliation. Respect the people in charge of administration and representation

of these companies, access to their identifying 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 regulations for the protection of personal data do not prevent the personal data of professionals that can be accessed through the Single Window from being communicated to third parties who request it by telephone or email."

These conclusions were derived from the analysis of the applicable regulations, from which it is clear that the publication of the identifying information of registered professionals is a legitimate treatment protected in the fulfillment of a legal obligation (article 6.1.c) of Regulation (EU) 2016/679, of 27 April 2016, General Data Protection (hereafter RGPD)) provided for in article 10 of Law 2/1974, of 13 February on Professional Associations, and article 40 bis of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations.

We recall that both article 10 of Law 2/1974, of 13 February on Professional Associations, and article 40 bis of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, provide that the professional association must make public through the Finestreta Unica register of members which must include, in any case, the following information:

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

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 aforementioned opinion takes into consideration that the regulations of professional associations do not distinguish between one and another type of collegiates, unless this regulation provides that the register of collegiates must contain the information of collegiate professionals without any distinction. In such a way that it is concluded that the information relating to registered professionals must be published regardless of their status as a practitioner or not, as long as the data relating to their non-practicing status is also provided.

The opinion refers to the fact that it must be taken into account that article 19.3 of Organic Law 3/2018, of December 5, on the 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 is necessary for the exercise of their powers, to publish the contact details of liberal professionals necessary for their professional location and as long as the purpose is linked to this professional activity. Thus, to the data that must be published in the single window to be included in the Register of Collegiates, you can add the

publication of other data necessary for the professional location of members, such as the data relating to the telephone or email.

III

In the new consultation, the Professional Association raises doubts regarding the application of article 19.3 of the LOPDGDD to non-practicing members since, as indicated, "they are individuals who belong to the group and are not exercising functions as entrepreneurs or professionals." Requests that it be determined what information must be published in the single window or communicated in the event of telephone or email inquiries, regarding non-practicing members (distinguishing Non-practicing Members from "Non-practicing Members in a situation of incapacity due to retirement or disability"), as well as

Article 19.3 of the LOPDGDD establishes the following:

"1. Unless proven otherwise, the treatment of contact data and, where appropriate, those relating to the function or position performed by individuals who provide services in a legal entity provided that the following requirements are met:

a) That the treatment refers only to the data necessary for your professional location.

b) That the purpose of the treatment is solely to maintain relations of any kind with the legal entity in which the affected party provides its services.

2. The same presumption will operate for the treatment of data relating to individual entrepreneurs and liberal professionals, when they refer to them only in that condition and are not treated to establish a relationship with them as natural persons.

3. Those responsible or in charge of the treatment referred to in article 77.1 of this organic law may also treat the data mentioned in the two previous sections when it derives from a legal obligation or is necessary for the exercise of their powers."

In the case of professional associations, the third section of article 19 LOPDGDD applies, which enables the processing of contact data, in this case of registered professionals, when it derives from a legal obligation or is necessary for the exercise of its powers and the two requirements referred to in the first paragraph of this article are met, that is to say:

1. That the treatment refers only to professional location data (therefore personal data such as personal address - unless there is a match with the professional -, personal email or private telephone number are excluded).

2. That the purpose is "uniquemente mantener relaciones de cualquier índole with the legal person in which the affected person provides his services" (this purpose in the case of professionals must be understood as referring to maintaining relations of any kind types related to

his status as a professional, that is to say, that it does not aim to relate to him in his private sphere).

To the extent that professional associations have the obligation to publish the list of members who appear in the Association Register, both practicing and non-practicing (Article 11 of the Statutes of the Professional Association establishes that "collegiate members can be practicing or non-practicing"), it must be considered that it forms part of their competences (article 10 of Law 2/1974, of 13 February on the Colleges Professionals, and article 40 bis of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations). The advertising obligations provided for in the regulations governing professional associations are not limited to practicing members but affect all members. And it can be considered that it is within their powers to facilitate contact with these people (in fact, Article 10 of Law 10/21974 and Article 40 bis Law 7/2006 already provided for the publication of certain professional data of contact).

The approval of article 19 of the LOPDGDD has come to expand those contact details, given that it has come to recognize that public bodies (which include corporations under public law for the exercise of their public functions) can handle - and this also includes publication - the professional contact details of liberal professionals. Certainly, unlike the regulation of the single window, which establishes as an obligation the publication of the professional address, in the case of other contact data, such as the professional telephone or an email address, it is not configured as an obligation, rather, article 19.3 should be understood only as a qualification. In other words, it will be up to each college to decide whether or not to make use of the authorization contained in article 19.3 LOPDGDD. Of course, as long as the treatment (in this case the publication) refers only to the professional location data and, in addition, that the people who make use of this data, only use it to establish professional relationships with the affected professionals .

And in the case of non-practicing collegiate professionals, this fact can certainly clearly limit the possibilities of use that can be made by people who have access to the published data, but it cannot be ruled out that there are cases in which despite find themselves in a non-practicing situation, third parties may have an interest in contacting them for professional reasons (for example to offer them work, to give them an assignment, for procedures related to previous actions of said professionals etc.).

On the other hand, this treatment must be subject to the rest of the principles of the RGPD, among which for the purposes that concern us now, the principle of accuracy regulated in article 5.1.d) which establishes the obligation responsible for ensuring that the personal data it has is accurate and kept up-to-date, and to take all reasonable measures to delete or rectify without delay any personal data that is inaccurate with respect to the purposes for which it is processed.

IV

The consultation not only raises the applicability of article 19 LOPDGDD to non-executive members, in general, but specifically raises its applicability with respect to non-executive members

practitioners due to retirement or disability, and also with respect to retired or deceased members and with respect to data of their heirs.

With regard to the data of non-executive members due to retirement or disability, it must first be taken into account that, as we have seen, the same laws 2/74 and 7/2006 already provided that the publication of the data of members was not limited to practicing professionals, but affected all of them, with indication of their qualification status.

The fact that the status of non-practicing is due to retirement, disability or other reasons, is irrelevant both from the point of view of the publication obligation contained in Laws 2/74 and 7/2006, and of the possibility of applying the authorization contained in article 19.3 LOPDGDD.

Of course, as has already been pointed out, it must be taken into account that, as in the case of the rest of the people listed as non-practitioners, the people who have access to the data published under article 19.3 of the LOPDGDD, they can only use them to contact them for professional reasons.

v

The data of deregistered members must not appear published in the single window nor can it be considered that article 19.3 of the LOPDGDD is applicable because from the moment they cease to be members the college legi is not authorized for publication.

With regard to the data of deceased professionals, it must be said that the data of deceased persons are not subject to protection by the data protection regulations (Recital 27 of the RGPD and art. 2.2.b) LOPDGDD) . Therefore, in this case, the provisions of the RGPD would not apply, nor those provided for in article 19 of the LOPDGDD.

With regard to the data of the heirs, neither Law 2/1974 nor Law 7/2006 authorize the publication of the data of the heirs of a deceased registered person.

Nor does article 19 of the LOPDGDD, enable this publication, to the extent that article 19 refers exclusively to the professional contact details of liberal professionals, but not those of their heirs.

Conclusions

The College can publish through the single window or communicate to third parties information consisting of name and surname, registration number, degree, professional contact details (professional address, telephone, email...) and professional residence situation, regardless of whether they are practicing or non-practicing professionals and, in the case of the latter, whatever the reason for not practicing.

The personal data protection regulations do not apply to the data of deceased persons.

Neither the regulations governing the single window, nor article 19 LOPDGDD enable the publication of data of deregistered members, or of the heirs of deceased members, whether practicing or not.

Barcelona, March 15, 2021

Machine Translated