

CNS 31/2021

**Opinion in relation to the query made by a professional association on the communication to the client of data contained in the judicial procedure**

**A query formulated by a professional association on the communication to the client of data contained in the judicial procedure is presented to the Catalan Data Protection Authority.**

**In the consultation it is stated that in accordance with art 35 of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, professional associations are legal corporations public, endowed with their own legal personality and with full capacity to act for the fulfillment of their purposes, and, that according to art. 39.c) of the aforementioned Law, among the public functions of professional associations is that of exercising disciplinary authority o**

**It also suggests that art. 20 of the Catalan Bar Regulations regulates the rights and obligations of the legal professional and the client, and its section 1.d) establishes that the client has the right to be informed by the legal professional law firm that advises or defends him, and he has the obligation to inform his client of the actions carried out and the results that are being achieved, all providing him/her, if the client so requests , copy of the various documents that are presented or received, of the judicial or administrative resolutions that are notified to him and of the recordings of performances that have taken place. Failure to comply with this obligation could lead to disciplinary liability, in the event that the client requests a copy of the documentation and the lawyer does not facilitate it.**

**In this regard, he states that one of the cases that the lawyers bring to the college is the response that must be given to the requests for access to certain personal data, which are formulated by the people they defend (i.e. professional or private). More specifically, if they can inform their clients (at their request) of the data of the other people involved in the same judicial actions (especially in criminal ones) in compliance with the duty established in art. 201.d) of the Regulations of the Catalan Bar and above all in the exercise of the right of defense (art. 24 CE) of the clients, which would aim to have access to all the information included in the proceedings and that has not been declared in secret summary. As indicated, a lawyer can act in defense of different accused persons in the same judicial actions, or in different ones that accumulate and also has access to information with data of other people, such as other parties in the procedure , witnesses, experts, etc.**

**As indicated, the clients, requesting the information, motivate the request in the need to know the judicial actions (civil, social, criminal that were not declared secret by the judicial body, etc.) , in order to be able to know the details of the facts and circumstances and give an answer or provide evidence that favors their defense. In this documentation there is the identity of the other people involved in the procedure (such as those listed as investigated in the same criminal proceedings). They claim to have a legitimate interest in knowing this data, in exercise of their constitutional right of defence.**

**In this context, he requests the criterion of this Authority on the legality of communicating to a client the identification data and other data (which are recorded in the judicial proceedings) of the rest**

of people involved in the same judicial procedure, in order to be able to prepare the defense with all the guarantees.

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:

I

(...)

First of all, it is considered appropriate to point out that this opinion is issued to the extent that the consultation is carried out by a professional association with the purpose of clarifying issues that could affect its competences in disciplinary matters of the members and that , therefore, would affect the exercise of public functions by the Professional College that remain subject to the scope of action of this Authority in accordance with article 3 Law 32/2010, of 1 of October, of the Catalan Data Protection Authority. All this, without prejudice to the powers that the Spanish Data Protection Agency may have with regard to the processing of personal data that the lawyers may carry out.

(...)

II

In order to focus the answer to the questions raised, it is necessary to analyze what are the regulations applicable to the processing of data that a lawyer would carry out in relation to the information he knows in the exercise of his representation of a client in a judicial procedure.

The data protection regulations applicable to data processing carried out by the competent authorities in the field of the administration of justice for jurisdictional purposes are determined depending on the type of judicial procedure in question.

It must be taken into consideration that, in accordance with the provisions of article 2.2.d) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons by regarding the processing of personal data (RGPD), this does not apply to the processing of personal data "by the competent authorities for the prevention, investigation, detection or prosecution of criminal offences, or the execution of criminal sanctions , including protection against threats to public security and their prevention." (Article 2.2.d) of the RGPD)

Therefore, with regard to the processing of data in the field of criminal proceedings, it is necessary to take into account the Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and enforcement of criminal sanctions, which transposes Directive (EU) 2016/680 of Parliament and of the Council, of 27 April 2016, relating to the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of

prevention, research, detection or prosecution of criminal offenses or execution of criminal sanctions, and the free circulation of this data and which repeals Framework Decision 2008/977/JAI of the Council, which will enter into force from of June 16, 2021 and which modifies, through its third final provision, Organic Law 6/1985, of July 1, on the Judiciary (LOPJ).

This distinction regarding the regulations applicable to the processing of data by the competent authorities in the field of processes for jurisdictional purposes is contained in article 236 ter of the LOPJ which establishes:

"1. The treatment of personal data carried out on the occasion of the processing by the judicial and prosecutorial bodies of the processes for which they are competent, as well as that carried out within the management of the Judicial and Fiscal Office, will be governed by the provisions of Regulation (EU) 2016/679, Organic Law 3/2018 and its implementing regulations, without prejudice to the specialties established in this Chapter and the procedural laws.

2. In the scope of the criminal jurisdiction, the treatment of personal data carried out on the occasion of the processing by the judicial and prosecutorial bodies of the processes, proceedings or files of those that are competent, as well as that carried out within the management of the Judicial and Fiscal Office, will be governed by the provisions of the Organic Law on the protection of personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offenses and the execution of criminal sanctions, without prejudice to the specialties established in the present Chapter and the procedural laws and, as the case may be, Law 50/1981, of December 30, which regulates the Organic Statute of the Prosecutor's Office.

3. The consent of the interested party will not be necessary for the processing of personal data in the exercise of jurisdictional activity, whether these are provided by the parties or collected at the request of the competent bodies, without prejudice to the provisions of procedural rules for the validity of the test."

Therefore, in accordance with what is established by the new article 236 LOPJ the processing of personal data that is carried out in the processing by the jurisdictional bodies and the prosecutors' offices of the processes of which they are competent, as well as that carried out within the management procedural of the Judicial and Fiscal Office, in the field of criminal jurisdiction, is governed by LO 7/2021, without prejudice to the specialties established in the LOPJ, the procedural laws and, where appropriate, in the Organic Statute of the Fiscal Ministry (EOMF).

On the other hand, the processing of data carried out by the judicial bodies and prosecutors of the processes that are competent, as well as that carried out within the management of the Judicial and Fiscal Office, with regard to the rest of the jurisdictions is governed by the RGPD, the LOPDGDD and its development regulations, without prejudice to the specialties established in the LOPJ and procedural laws.

Now, regardless of whether it is a procedure in the criminal field or in another jurisdiction, the LOPJ will apply with regard to the specialties it regulates, including access to information that work in judicial proceedings.

Therefore, in the case we are dealing with, in order to determine the lawfulness of the communication of information that works in a judicial procedure (criminal or in any other area) the specialties regulated on this issue in the LOPJ will be applied.

Chapter I bis of the third Title of the third Book of the LOPJ establishes, as its title indicates, the criteria on the protection of personal data in the field of the administration of justice.

Article 236 bis of LOPJ establishes that in the field of the administration of justice, the processing of personal data can be carried out for jurisdictional or non-jurisdictional purposes and provides that "The processing of the data that is found will have jurisdictional purposes incorporated in processes that have the purpose of exercising jurisdictional activity.". The query therefore refers to data obtained by lawyers regarding jurisdictional treatments in the field of the administration of justice.

### III

With regard to access to the information that integrates the procedural actions, in general article 234 of the LOPJ establishes:

1". The Letrados de la Administración de Justicia and competent officials of the judicial office and the fiscal office will provide the interested parties with any information they request about the status of the procedural actions, which they can examine and know, unless they are or had been declared secret or reserved according to the law

2. The parties and any person who proves a legitimate and direct interest will have the right to obtain, in the manner provided in the procedural laws and, in their case, in Law 18/2011, of July 5, regulating the use of information and communication technologies in the Administration of Justice, simple copies of the writings and documents contained in the files, not declared secret or reserved. They will also have the right to have the testimonies and certificates issued to them in the cases and through the channel established in the procedural laws."

Interested parties are granted the right to examine and know all the information they request about the state of procedural actions, except for those that have been declared secret or reserved in accordance with the law. This right, with regard to the parties and any person who proves a legitimate interest, also entails the right to obtain simple copies of the writings and documents contained in the files, not declared secret or reserved.

Therefore, from the subjective point of view, it is the parties (interested persons), in the process who have the recognized right to access the information that works in the judicial procedure in order to be able to exercise their right to protection effective judicial And, given the function that corresponds to lawyers of legal direction and defense of the representation of the parties in the judicial process, this access can be made through the lawyers who represent them in

From an objective point of view, the information to which the parties can access will be all that is incorporated in the judicial procedure in question, and, only with respect to the information

that has been declared secret or reserved, this access may be limited as established in article 234.1 reproduced, and also article 236 septies.2, of LOPJ which provides:

"(...)

2. In any case, access to the data subject to treatment for jurisdictional purposes will be denied when the procedural steps in which the information has been collected are or have been declared secret or reserved. (...)"

With regard to the personal data of the information that integrates the judicial procedures, article 236 quinquies of LOPJ establishes:

"1. The resolutions and procedural actions must contain personal data that are adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated, especially to guarantee the right to effective judicial protection, without, in any case, helplessness can occur.

2. The Judges and Magistrates, the Prosecutors and the Lawyers of the Administration of Justice, in accordance with their powers, may adopt the measures that are necessary for the deletion of the personal data of the resolutions and of the documents to which they can access parties during the processing of the process as long as they are not necessary to guarantee the right to effective judicial protection, without, in any case, being helpless.

3. The personal data that the parties know through the process must be treated by them in accordance with the general data protection regulations. This obligation also falls on the professionals who represent and assist the parties, as well as anyone else who intervenes in the procedure.

(...)"

The first paragraph of the transcribed article 236 quinquies, provides that the data in the judicial process will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated, emphasizing the need to guarantee the right to effective judicial protection without under any circumstances being helpless. The Judges and Magistrates, the Prosecutors and the Lawyers of the Administration of Justice, in accordance with their powers, are given the power to adopt the necessary measures for the deletion of the personal data of the resolutions and of the documents that the parties can access during the processing of the process, with the limit of this deletion being that the data are not necessary to guarantee the right to effective judicial protection and that defenseless

Therefore, in addition to the information that is part of procedural proceedings declared secret or reserved, the judges and magistrates, the fiscal ministry and the lawyers of the Administration of Justice, can agree to the deletion, in the documents to which the parties during the processing of the process, of personal data that may be excessive or not suitable for this purpose, as long as they are not necessary to guarantee the right to effective judicial p

In short, and without prejudice to the limitations on access (applicable also to the lawyer himself) as a result of the procedural proceedings declared secret or reserved, and of those other data that judges and magistrates, the Ministry of Public Prosecutions and lawyers of the Administration of Justice agree, the LOPJ recognizes the parties in the judicial procedure the right to access the information that integrates it, and, consequently, the lawyers who act in the procedure as legal directors and representatives of a client they can communicate to you all the information they have relating to the procedure, including the data of the other parties or third parties that may appear in it, that the judicial office has provided to them as a result of the

#### IV

The consultation also points to the possibility that the information to which the clients request access is information that the lawyer has as a result of representing another client.

With respect to this issue, it must be taken into consideration that section 3 of article 236 quinquies of LOPJ establishes that both the parties and the professionals who represent and assist them (lawyers and solicitors) as well as any other professional who intervenes in the procedure (experts, insolvency administrators, etc.) must treat the personal data they know in accordance with the general data protection regulations. According to the same article, "This obligation also falls on the professionals who represent and assist the parties, as well as anyone else who intervenes in the procedure."

Therefore, the lawyer, with respect to the information he has access to in the representation of his clients in judicial proceedings, will be subject to the RGPD and the LOPDGDD.

In the treatment of this information, in addition to the other obligations attributed to him by the data protection regulations, the lawyer must respect the principles relating to the treatment of personal data provided for in article 5.1 of the RGPD, among which the principle of purpose limitation, according to which the data must be collected for specific, explicit and legitimate purposes and cannot be subsequently processed in a manner incompatible with these purposes (art. 5.1.b) and the principle of integrity and confidentiality which determines that adequate security of personal data must be guaranteed, including protection against unauthorized or un

Consequently, the principle of purpose limitation and the principle of confidentiality would prevent the lawyer from communicating to a client the data he has as a result of representing another client in a judicial proceeding. This limitation affects both the personal data of your representative and other third parties who may rely on it, whether they are other parties in the procedure, witnesses, experts, etc.

In addition, the same LOPJ establishes in its article 542.3 the following:

(...)

Lawyers must keep secret all the facts or news that they know about any of the modalities of their professional performance, and they cannot be forced to testify about them."

**In short, from the perspective of the data protection regulations as well as the regulations governing this profession (LOPJ), the lawyer cannot use the data he knows in a judicial proceeding on behalf of a client , for the representation and defense of another client, unless, in the specific case, it has one of the legal bases provided for in article 6 RGPD.**

## **Conclusions**

**The parties in the judicial procedure have the right to access all the information contained in it, except that information that has been declared secret or reserved, and the personal data that the judges and magistrates, the fiscal ministry or the lawyers of the Administration of Justice, have agreed to delete for being excessive or inappropriate. Consequently, the lawyers who represent a client in the judicial procedure can communicate to him all the information they have about the procedure, including the data of the other parties or of third parties that may appear in it, provided by the judicial office as a**

**The lawyer cannot use the data he knows in a judicial proceeding on behalf of a client, for the representation and defense of another client, unless it has a specific legal basis of those provided for in Article 6 RGPD .**

**Barcelona, June 17, 2021**