

CNS 6/2022

Opinion in relation to the query made by an Official College on whether it can transfer the data of its members to the General Council of its College

A request for an opinion is submitted to the Catalan Data Protection Authority Vice-Dean, Secretary and data protection delegate of an Official College, on whether it can transfer the data of its members to the General Council of the College.

In the consultation it is stated that "at the last meeting of the Board of the Council in January 2022 it was approved to have a centralized census of all regional members (the Council would use this census for issues related to our profession and to publish the list of registered engineers on its website). The (...) is previous was created before the (...)I and, therefore, in the Statutes of the (...) no specific mention is made of the Spanish Council, nor is there any mention of the college registration forms of (...) that the data of the members will not be transferred to any state/entity/council of a higher order (it is only said that their data will be used for matters related to the our profession, specifically "to carry out management and activities for the purposes of the school").

(...)We would like to receive formal confirmation from the ACPD on whether the (...)is authorized to send cedir de periodically the basic data (name, surname, member number, date of registration at the school, degree) of our members to the (...) (Spanish Council) and if, to do so, we should have the explicit consent of our members a priori or this step should not be taken, as the Council is an entity that coordinates all the regional colleges and it is understood that it would fall within its own functions and management del col-legi.com, a semi-public entity, must publicize the data of members within the framework of professional practice, in accordance with current regulations (...)"

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

The DPD of the professional College requests the criterion of this Authority on whether the College is authorized to periodically transfer the basic data (name, surname, membership number, date of enrollment at the college law, qualification) of its members in the General Council and if, to do so, they need the explicit consent of the members, or consent would not be necessary to understand that it would fall within the functions of the Council. In the consultation it is mentioned that these

data will be used for topics related to the profession and for the publication of the list of members on the web.

In order to answer the query, it is necessary to take into account, first of all, the concept of data processing provided for in Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Protection of Data (hereinafter, RGPD) which defines personal data processing 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.

Also, the RGPD defines personal data 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 communication of data from members of the Professional Association to the General Council referred to in the query constitutes data processing that must be subject to the principles and guarantees established by the RGPD and the rest of the regulations in the field of protection of personal data.

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, which establishes:

- "a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;
- c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;
- d) the treatment is necessary to protect the vital interests of the interested party or another natural person;
- e) the treatment 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;
- f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests are not

the interests or fundamental rights and freedoms of the interested party that require the protection of personal data prevail, particularly when the interested party is a child.
(...)"

Therefore, any communication of data will require one of the legal bases mentioned and, if, in addition, it involves the processing of special categories of data, it will also have to meet one of the exceptions provided for in article 9.2 RGPD.

It should be taken into consideration that as it follows from article 6.3 of the RGPD, the legal basis for the treatment indicated in letters c) and e) of article 6.1 of the RGPD must be established by Union Law European or by the law of the Member States that applies to the data controller.

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 8 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (LOPDGDD), that the enabling rule has the status of law.

III

Professional associations are corporations under public law with their own legal personality and full capacity to act for the fulfillment of their purposes, as established in article 1.2 of Law 2/1974, of February 13, on Col · Professional laws, (hereafter Law 2/1974), and in the same sense article 35 of Law 7/2006, of 31 May, on the exercise of qualified professions and Professional Associations of Catalonia (in onwards Law 7/2006).

Generally speaking, Law 2/1974 establishes in its article 1 apparatus 3, what are the essential purposes of these corporations in the following terms:

"3. The essential purposes of these Corporations are the regulation of the exercise of the professions, the exclusive institutional representation of the same when they are subject to compulsory membership, the defense of the professional interests of the members and the protection of the interests of consumers and users of the services of their colleagues, all without prejudice to the competence of the Public Administration due to the official relationship".

In the same sense, article 36 of Law 7/2006, of 31 May, on the exercise of Titled Professions and Professional Associations of Catalonia establishes that professional associations "(...)" their essential purpose is to ensure that the actions of their associates respond to the interests and needs of society in relation to the professional exercise in question, and especially to guarantee compliance with good practice and the deontological obligations of the profession, and the protection of the interests of users and consumers of professional services. They also have the purpose of ordering, the representation and defense of the profession and the professional interests of the members."

Regarding the functions that Law 2/1974 attributes to professional associations, article 5 establishes:

- a) How many functions benefit the protection of the interests of consumers and users of the services of their colleagues.
- b) Perform any functions assigned by the Administration and collaborate with it by carrying out studies, issuing reports, preparing statistics and other activities related to its purposes that may be requested or agreed to formulate on its own initiative.
- c) Show the representation that the laws establish for the fulfillment of their ends.
- d) Participate in the Councils or Consultative Bodies of the Administration in the matter of competence of each of the professions.
- (...)
- i) Order, within the scope of their competence, the professional activity of collegiates, ensuring professional ethics and dignity and due respect for the rights of individuals and exercising disciplinary authority in the professional and collegial order.
- (...)
- u) Respond to requests for information on their colleagues and on the firm sanctions imposed on them, as well as inspection or investigation requests made by any competent authority of a Member State of the European Union in the terms provided for in Law 17/ 2009, of November 23, on free access to service activities and their exercise, in particular, in what refers to requests for information and to carry out controls, inspections and investigations are duly motivated and that the information obtained is used solely for the purpose for which it was requested."

For its part, article 39 of Law 7/2006, establishes the public functions that correspond to professional associations, among which it is necessary to highlight the effects that we are concerned with those provided for in letters a) "*Guarantee that the professional exercise conforms to the regulations, deontology and good practices, and that the rights and interests of the recipients of the professional performance are respected (...)*", b) "*Ensure rights and compliance of the duties and obligations of the members (...)*", h) "*Collaborate with the Public Administration by participating in administrative bodies when this is legally provided for and issue the reports that are required by bodies or authorities administrative and judicial*", im) "*The other functions of a public nature attributed to them by current legislation*".

Consequently, it can be said that there is a whole series of personal data treatments related to the functions carried out by professional associations that are public in nature and that correspond to the exercise of public powers that have been conferred on them by legislation analyzed

From this public aspect, the processing of personal data, in this case of registered professionals necessary for the exercise of the functions entrusted by the aforementioned professional association laws, may have as a legal basis the letter e) of article 6.1 of

the RGPD, according to which the treatment will be lawful when it is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the person responsible for the treatment.

From the point of view of the recipient of the data raised in the consultation, the General Councils of the Professional Associations are also corporations under public law with their own legal personality and full capacity that are assigned public functions related to the exercise of the profession and the protection of users and consumers of the services of its professionals. In this sense, article 9 of Law 2/1974, of February 13, on Professional Associations, establishes:

"The General Councils of the Schools have to all effects the condition of Corporation of Public Law, with its own legal personality and full capacity. They will have the following functions:

a) Those attributed by the fifth article to Professional Colleges, insofar as they have a national scope or impact.

(...)"

Therefore, and in line with the functions provided for in article 5 of Law 2/1974 to which we have referred above, the data processing of registered professionals carried out by the General Council for the fulfillment of the functions public attributed by the legislation of professional associations, may also have as a legal basis the letter e) of article 6.1 RGPD (treatment necessary for the exercise of public functions conferred on the person in charge of the treatment).

IV

As has been explained, within the public functions that the regulations of professional associations attribute to the Professional Associations is that of keeping a register of professionals and publishing through from its website certain data from the collegiate register. In this sense, article 10 of Law 2/1974 establishes the following:

(...)

2. Through the mentioned single window, for the better defense of the rights of consumers and users, the collegiate organizations will offer the following information, which must be clear, unambiguous and free:

a) Access to the Register of Associates, which will be permanently updated and which will contain, at least, the following data: number and surnames of the affiliated professionals, membership number, official titles of those in possession, professional address and status of professional qualification.

(...)

3. The collegiate corporations must adopt the necessary measures to comply with the provisions of this article and incorporate the necessary technologies and create and maintain technological platforms that guarantee interoperability between the different systems and the accessibility of people with disabilities. **For this, the professional colleges and, where appropriate, the General and Autonomous Councils will be able to implement the necessary coordination and collaboration mechanisms, including with the corporations of other professions.**

4. **The territorial professional associations will provide to the General or Superior Councils, and in their case to the Autonomous Councils of Schools, the information concerning the additions, terminations and any other modifications** that affect the Registers of collegiates and professional societies, for their knowledge and annotation in the central registers of collegiates and professional societies.

It should be taken into account that what is established in this article with reference to collegial organizations is applicable to the General Councils since the third additional provision of the Law 2/1974, establishes:

"1. Collegiate organization means the set of collegiate corporations of a certain profession.

2. The General or Superior Council of Schools, the State-level Schools, the Autonomous Councils of Schools and the Professional Schools are collegiate corporations."

It follows from the provisions of article 10 of Law 2/1974 that, in the exercise of the aforementioned public functions that correspond to collegiate organizations, professional associations must have a Register of collegiate members, which must be permanently updated (article 10.2) and, the General Councils, must have the so-called central registers of collegiates (article 10.4). From the information available, it seems that the purpose of the transfer would coincide with these functions that the aforementioned article 10 attributes to the collegial organizations.

Specifically, section 4 of article 10 establishes that territorial professional associations must provide the general or higher councils, and where applicable to the regional councils of colleges, the information relating to admissions, dismissals and any other modifications that affect the registers of collegiates and professional societies, so that they become aware of it and note it in their central registers of collegiates and professional societies.

Therefore, the exercise of the public functions attributed to professional associations and general councils in articles 1, 5, 9 and 10 of Law 2/1974, constitutes, for the purposes that concern us, a legal basis in relation to the fulfillment of a mission in the public interest or the exercise of public functions provided for in article 6.1.e) of the RGPD, which would enable the processing of the data of registered professionals necessary for the creation and maintenance of mentioned collegial registers and central registers

It should be noted that, although article 10.2 establishes the minimum data for registered professionals that must be included in the registers of registered professionals (name and surname of registered professionals, registration number, official titles that they have, the professional domicile and the status of professional qualification), it is not a closed list, as can be seen from the expression "at

less". For this reason, the authorization for the communication of the data must be understood as covering not only the data in the register that the law obliges to publish, but also any other data that must be included in the register.

Aside from what has just been explained, the provisions of article 10.4 relating to the communications that the territorial professional associations must carry out to the General Councils, of additions, deletions and other modifications that affect the Registers of collegiates would also give rise to the concurrence of another possible legal basis to carry out the treatment. In this case we mean that the treatment of this data is necessary for the fulfillment of a legal obligation applicable to the person in charge of the treatment (Article 6.1.c) of the RGPD), given that the communication of the data from the records of the which the colleges provide to the general councils is foreseen in the college regulations as an obligation.

In short, the communication of the data referred to in the query (name, surname, membership number, date of enrollment at the college, qualification) by the Professional College to the General Council for the management and maintenance of the Central Register of members, it would have as a legal basis the provisions of the legislation of professional associations in relation to sections c) and e) of article 6 of the RGPD and, for thus, it could be carried out without the consent of the registered professionals.

v

In the consultation, it is noted that the form for collecting the members' data does not provide that the data will be communicated to the General Council. This circumstance, however, does not exclude the concurrence of the legal bases that have just been exposed.

First of all, from the point of view of the information obligations that the General Council should assume as the person responsible for the treatment of the data of the members that have been communicated to it, article 14 of the RGPD establishes that, when the data have not been obtained from the same interested party, the data controller must inform him, within a reasonable period and, at most, within one month or, if the personal data have been to use for communication with the interested party, at the latest at the time of the first communication with that party, of all the aspects referred to in paragraphs 1 and 2 of that article.

This obligation will not be enforceable against the data controller, in this case the General Council, if any of the cases provided for in paragraph 5 of article 14 of the RGPD occur. Specifically, in the case at hand, letter c may apply):

"[...]

The provisions of sections 1 to 4 will not apply when and to the extent that:

(...)

c) the obtaining or communication is expressly established by the Law of the Union or of the Member States that applies to the person responsible for the treatment and that establishes adequate measures to protect the legitimate interests of the interested party, or

In the case at hand, the communication of the members' data that is intended to be carried out between the professional association and the General Council can be considered included in the exception provided for in article 14.5.c) and, for therefore, it would not be required that the General Council inform the members of this treatment.

Secondly, with regard to the information obligations of the professional association that collects the data directly from the registered professionals (article 13 of the RGPD), in principle it must include the information relating to the recipients of the information collected. However, the information provided to the affected persons does not have to include, for the validity of the communication, all possible transfers of data to which the professional association may end up being obliged to do, when a rule with the rank of law, as in the case at hand, establishes the obligation to make the communication.

Despite this, given both the relevance that this communication of their data to the General Council may have for the members, as well as the predictability that this personal data will be made public, it would be advisable for the professional association to inform the members, in the registration, cancellation or modification forms for the communication of your data to the General Council.

Conclusions

The Professional Association has a sufficient legal basis to periodically communicate the basic data (name, surname, membership number, date of enrollment in the association, qualifications) of its members to the General Council of the Association without their explicit consent.

Barcelona, March 17, 2022