

**Opinion in relation to the inquiry made by the Protection Delegate of
Data from a university on faculty evaluation surveys
university**

A query is presented to the Catalan Data Protection Authority by the Data Protection Officer (DPD) of a university regarding assessment surveys of the university professors.

In the consultation, it is stated that the university, in compliance with its duty to continuously improve the quality of teaching, conducts a semesterly survey of undergraduate and master's students *"which aims to evaluate the subjects or modules, and which includes descriptive evaluative questions, satisfaction evaluative and answer fields open"*.

As indicated, *"the resulting report, with the individual identification of the teaching staff and the evaluation results, can be consulted by the Dean's Office of the center where the subject is programmed, by the degree coordinator where the subject is programmed and by the director of the department where the subject is scheduled. This dissemination is carried out with the aim that the recipients have the necessary information for the exercise of their competences, as well as for the detection of opportunities for improvement."*

Likewise, and for the same purposes mentioned above, the university has considered making the information available to professors who teach the same subject in other degrees.

On the other hand, in the free text field, students include personal comments of satisfaction or dissatisfaction with both the subject and the teacher who teaches it.

The university has enabled a monitoring system that prevents the display of comments considered offensive. However, some teachers have requested the removal of some comments that, despite not being detected as offensive in the filtering process, they consider harmful to their honor or good name, and understand, in addition, that its maintenance is contrary to the principle of minimization of the RGPD, although these comments do not usually contain personal data, but only the opinions of the students about the teaching staff".

In this context, the DPD of the university requests an opinion on the following questions:

"1. Whether the access to the teacher's individual report by the rest of the teachers who teach the same subject in other degrees at the university is adequate, relevant and not excessive data processing in relation to the purposes of the processing, or if, on the contrary, these reports should be properly anonymized.

2. If the free text field with the students' opinions about the subject and the teacher can be considered personal data, even if these comments do not include any personal data."

Having analyzed the query, in view of the current applicable regulations and, in accordance with the report of the Legal Counsel, I inform you of the following:

I

(...)

II

For expository purposes, the second of the questions raised will be analyzed first. That is, if the free text with the students' opinions about the subject and the teaching staff can be considered personal data.

In order to answer this question, it is necessary to start from the consideration that, in accordance with article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), personal data is: *"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;*

The concept of personal data in the RGPD is a broad concept that covers any information referring to a natural person, whether this person is identified or can be identified. A person is considered to be identifiable when their identity can be determined directly or indirectly by means of an identifier, such as the name or number of their identity card or driver's license, or that they can be identified to based on elements of that person's physical, psychological, physiological, economic, cultural or social identity.

In this regard, recital 26 of the RGPD establishes:

"The principles of data protection must be applied to all information relating to an identified or identifiable natural person. Pseudonymized personal data, which could be attributed to a natural person through the use of additional information, must be considered information about an identifiable natural person. To determine whether a natural person is identifiable, all means, such as identification, that can reasonably be used by the data controller or any other person to directly or indirectly identify the natural person must be taken into account. To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment as technological advances. Therefore, the principles of data protection should not be applied to anonymous information, that is, information that is not related to an identified or identifiable natural person, nor to data converted into anonymous data in such a way that the interested party is not identifiable, or to be Consequently, this Regulation does not affect the

treatment of said anonymous information, including for statistical or research purposes."

With respect to what is to be understood by personal data, we can take into consideration Opinion 4/2007 of the GT of article 29 on the concept of personal data, which, although it analyzes this concept in Directive 95/46, the considerations they make are fully applicable to the concept of personal data included in the RGPD.

This is how Opinion 4/2007 states:

"From the point of view of the nature of information, the concept of data personal includes all types of statements about a person. Consequently, it covers "objective" information such as, for example, the presence of certain substance in its blood, but also information, opinions or evaluations "subjective". This last class of affirmations constitutes a considerable part of the flow of personal data processed in sectors such as banking, to evaluate the reliability of the borrowers ("So-and-so is a reliable borrower"), the insurer ("I don't know he hopes that So-and-so dies soon") or the labor ("So-and-so is un buen trabajador y merite a promotion».

For that information to be considered "personal data", it is not necessary that are true or proven. In fact, the data protection rules provide for the possibility that the information is incorrect and entrust the interested party with the right to to access that information and to refute it through the appropriate means

(...)

The term "personal data" includes information related to private life and relative of the individual stricto sensu, but also the information about any other type of activity developed by a person, such as that referred to their labor relations or their economic or social activity. The concept of "personal data" covers, therefore therefore, information about people, regardless of their position or capacity, as a consumer, patient, trabajador por cuenta ajena, client, etc.).

The surveys to evaluate the teaching performance of the teaching staff, as stated on the university's website, aim to evaluate the activity carried out by the teaching staff in the classroom. The information collected by these surveys, either through a score on predetermined questions that the students must evaluate or from the personal opinions of satisfaction or dissatisfaction expressed by them in a free text field of the survey forms, are "statements" or assessments about a natural person identified

As stated in Opinion 4/2017 of the GT29, all kinds of statements about a natural person must be considered personal data, and includes both "objective" information about that person, as well as "subjective" information, opinions or evaluations about that person natural person. And this, regardless of whether the information is true or not and whether it has been more or less checked.

In principle, the surveys could also contain data on the students who take them. Although this issue is not expressly mentioned in the consultation, for the purpose of issuing this

opinion is based on the consideration that the survey is anonymous, that is to say, it should not allow the answers to be linked to the identity of the specific student who answers it, given that in accordance with the principle of minimization (art. 5.1.c) RGPD), does not seem necessary to achieve the purpose pursued.

On the other hand, both the evaluation surveys of the teaching performance and the individual evaluation reports of each member of the teaching staff, to the extent that they include the evaluations made by the students on them, must be considered to contain data personnel of the evaluated teachers.

The students' opinions on the subject are a different matter. In this case, to the extent that these are evaluations that do not affect physical persons, but refer to the subject, the programming, organizational aspects, methodology, etc., detached from the person or persons teaching the subject, it cannot be considered personal information.

In short, and in response to the second of the questions raised by the DPD, it can be concluded that the students' opinions about the teachers, collected in the free text field of the surveys, are considered personal data of the evaluated teachers. The processing of this data must be carried out in accordance with the provisions of the RGPD and the Law Organic 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (LOPDGDD).

III

The first of the questions asked is analyzed below, that is, whether access to the individual report of a teaching person by the rest of the teaching staff who teach the same subject in other degrees of the university *"is an adequate, relevant and not excessive data processing in relation to the purposes of the processing, or if, on the contrary, these reports should be properly anonymized"*

The RGPD establishes that all 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"* (article 4.2 RGPD) must be legal, fair and transparent in relation to the interested party (article 5.1.a)).

In order for a treatment to be lawful, it must have, at least, a legal basis of those provided for in article 6.1 of the RGPD, among which mention should be made of that provided for in article 6.1.e), which set:

"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;"

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of the LOPDGDD, data processing can only be considered based on the bases

legal provisions of article 6.1.c) and 6.1.e) of the RGPD when so established by a rule with the rank of law.

Recital 41 of the RGPD specifies that when the RGPD refers to a legal basis *"said legal basis or legislative measure must be clear and precise and its application foreseeable for its recipients, in accordance with the jurisprudence of the Court of Justice of the European Union (hereinafter, "Court of Justice") and the European Court of Human Rights"*.

Law 1/2003, of 19 February, on Universities of Catalonia, establishes in its article 4 that one of the guiding principles of the organization of the Catalan university system is the promotion and evaluation of the quality of teaching.

Regarding the evaluation of teaching staff, article 19.2 of Law 1/2003, of 19 February, on Universities of Catalonia, establishes that:

"University teaching must be subject to evaluation. For these purposes, the universities, together with the Agency for the Quality of the University System of Catalonia, must develop teaching evaluation methodologies and programs in their various modalities.

The teaching evaluation functions correspond to the management bodies of the universities (deans, department directors) in accordance with the management functions of the centers and departments (articles 24 and 25 Law 1/2003) in the Social Council (article 88.c) of the same Law 1/2003).

For its part, the statutes of the university approved by Decree 237/2003, of October 8, establish as one of the purposes of the university *"To promote the evaluation of quality in teaching, research and management, in accordance with criteria, objectives and methodologies comparable to international standards"* (article 4.d), and attribute the competences for the evaluation of teaching both to the faculties or schools (article 15.k), and to the departments (article 22.i) and the Governing Council (article 62.2).

Therefore, university regulations attribute to universities competences related to the evaluation of the quality of the university system and, among these, for the evaluation of the quality of teaching. This competence attribution constitutes a legal basis in relation to article 6.1.e) RGPD, for the processing of the information contained in the surveys made to the students and the resulting individual reports, corresponding to each teacher.

But in addition to the principle of lawfulness, all processing of personal data must comply with the rest of the principles and guarantees of the RGPD, among which for the purposes of this report it is worth highlighting the principle of minimization according to which the data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (Article 5.1.c) RGPD).

In this regard, recital 39 of the RGPD states the following:

(...)Personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, to guarantee that

limit to a strict minimum its shelf life. Personal data should only be processed if the purpose of the treatment could not reasonably be achieved by other means. To ensure that personal data is not kept longer than necessary, the data controller must establish periods for its deletion or periodic review. All reasonable steps must be taken to ensure that inaccurate personal data is rectified or deleted. Personal data must be treated in a way that guarantees adequate security and confidentiality of personal data, including to prevent unauthorized access or use of said data and the equipment used in the treatment.

As this Authority has previously highlighted, the principle of data minimization entails both the obligation that the data controller does not process personal data in those cases in which it is not necessary to process them to achieve a certain purpose, such as the obligation that, in the event that it is necessary to process them, only the necessary and essential data will be processed, and also that no more processing will be done than is strictly necessary (for example, ensuring that only the right people will have access).

In the case we are dealing with, as has been explained, university regulations attribute to universities powers related to the evaluation of the quality of the university system and, among these, for the evaluation of the quality of teaching. The same regulation determines which are the bodies with powers to exercise these functions. To the extent that the teaching staff does not have functions related to the evaluation of the teaching, their access to the personal information contained in the evaluation reports must be considered excessive processing.

Yes, the teaching staff has duties related to continuous improvement and the quality of university education. However, in order to carry out these functions, it does not appear that the personal information relating to other teachers contained in the reports referred to in the query is necessary, but it may be sufficient to access aggregated results on the assessment of the teaching staff, so that cannot be related to specific people. Consequently, access to the individual report of a teaching person by the rest of the teaching staff who teach the same subject in other degrees at the university is excessive data processing in relation to the purpose of evaluation and improvement by to which they are treated.

Regarding the possibility of providing this information anonymously, it should be taken into consideration that the data protection regulations do not apply to anonymous information. Thus, Recital 26 of the RGPD specifies that *"the principles of data protection must not be applied to anonymous information, that is, information that is not related to an identified or identifiable natural person, nor to data converted into anonymous information in such a way that the interested party is not identifiable, or ceases to be so. Consequently, this Regulation does not affect the treatment of said anonymous information, including for statistical or research purposes.*

Likewise, recital 26 of the RGPD, in relation to article 4.1, provides that to determine whether a natural person is identifiable "[...] all media, such as singularization, that reasonably can be taken into account use the data controller or any other person to directly or indirectly identify the natural person. To determine whether there is a **reasonable probability that means are used to identify a natural person, all factors must be taken into account**

objectives, such as the costs and time required for identification, taking into account both the technology available at the time of treatment and technological advances.

In order for information to be considered anonymous, it is necessary to ensure that the information is not related to an identified or identifiable natural person. In this sense, Opinion 05/2014 of the GT29 on anonymization techniques, highlights that *"An effective anonymization solution prevents everyone from singularizing a person in a set of data, linking two records in a set of data (or two records belonging to different sets) and infer any type of information from said set. In short, as a general rule, it is not enough to eliminate the elements that can be used to directly identify a person to ensure that the person concerned can no longer be identified. Additional measures will often have to be taken to avoid said identification, which will once again depend on the context and the purposes of the treatment to which the data will be subjected."*

In the case at hand, the deletion of the names of teachers from individualized reports as an anonymization technique that is effective (in the sense that it does not allow re-identification without disproportionate effort), must take into account several aspects such as number of teaching staff of the same subject in the different degrees of the university, the specific information about these teaching staff that may be contained in the reports - more so if they include student evaluations expressed in the free text fields of the surveys - , as well as the previous information that may be available regarding these people.

Thus, for example, in an environment such as the one analyzed, it seems that offering the information grouped by subjects in many cases could end up identifying the specific people to whom it refers (if the number of teaching people who teach the same subject in the different degrees from the university is reduced or, for example, if reference is made to aspects such as the origin of the teaching person, their way of speaking, or some other personal aspect). Therefore, it would be necessary to aggregate the information to a level that would guarantee anonymity.

conclusion

The opinions of the students about the teaching staff, collected in the free text field of the evaluation surveys of the teaching performance of the teaching staff, have the consideration of personal data of the assessed teaching staff.

Access to individual teacher evaluation reports by the rest of teaching staff teaching the same subject in other degrees at the same university must be considered excessive treatment in relation to the purposes of evaluation and improvement of teaching performance. The communication could be made with prior anonymization.

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