

## Opinion in relation to the query made by a public law entity regarding the publication of personal data in personnel selection processes

A query formulated by a public law entity in relation to the publication of personal data in personnel selection processes is presented to the Catalan Data Protection Authority.

In particular, the entity consults *"what personal data of the candidates must be published and the way in which they must be published in the different phases of the selection process (excluded and inadmissible, provisionally admitted, merit score of those admitted, score of merits and tests of those admitted, score of interviews of those admitted, total scores of those admitted, allocation of place, etc.) and for the different labor recruitment regimes in (...) (temporary and permanent), either for the purpose of transparency either for the purpose of notification of the results of the process in all its phases"*.

Having analyzed the consultation, and in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, I issue the following opinion:

I

(...)

II

The query formulated by the entity is related to what data must be published and what are the criteria in terms of personal data protection that must be applied in the selection processes of personnel in the labor regime, from the perspective of the purpose of transparency and the publicity of said processes.

Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and by which repeals Directive 95/46/CE (General Data Protection Regulation), hereinafter RGPD, provides that its provisions are applicable to the treatments carried out on any information " *on 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* " (arts. 2.1 and 4.1).

On the other hand, article 4.2) of the RGPD considers treatment " *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, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction* .

The RGPD provides that all processing of personal data must be lawful, loyal and transparent in relation to the interested party (article 5.1.a)) and, in this sense, establishes a system of legitimation of data processing that is based on the need for any of the legal bases established in its article 6.1, among which section c) foresees the assumption that the treatment " *is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment* ".

In the case we are dealing with, as we will analyze below, the legality of the treatment relating to advertising and transparency in the selection processes is given mainly by Royal Legislative Decree 5/2015, of October 30, by which approves the revised text of the Law of the Basic Statute of the public employee (hereinafter, EBEP), Law 39/2015, of October 1, of the common administrative procedure of public administrations (LPAC) , Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) and the law creating the entity that formulates the consultation.

### III

In accordance with the regulatory regulations of the entity formulating the query, this is a public law entity of the Generalitat de Catalunya that adjusts its activity to private law, linked to a Department, with its own legal personality, full capacity to work and own assets for the fulfillment of their functions.

Article 23.2 of the Spanish Constitution provides that citizens have the right to equal access to public functions and positions, with the requirements indicated by law. At the same time, article 103.3 of the Spanish Constitution establishes that the law will regulate, among other things, access to public service in accordance with the principles of merit and ability.

Article 55 of the Royal Legislative Decree 5/2015, of October 30, approving the revised text of the Law on the Basic Statute of the Public Employee (EBEP) establishes that the selection of personnel is must carry out through procedures that guarantee the principles of equality, merit and capacity as well as, among others:

- "a) Publicity of calls and their bases.*
- b) Transparency.*
- c) Impartiality and professionalism of the members of the selection bodies.*
- d) Independence and technical discretion in the performance of the selection bodies.*
- e) Adequacy between the content of the selective processes and the functions or tasks that they must be exercised.*
- f) Agility, without prejudice to objectivity, in the selection processes."*

In similar terms, article 42 of Legislative Decree 1/1997, of October 31, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in matters of public service establishes that “[. ..] *the Administration of the Generalitat selects all its staff with objectivity criteria, based on the principles of equality, merit and capacity of the applicants, and through a public call*”.

In turn, the regulatory regulations of the entity formulating the consultation establish that its staff is made up of civil servants of the Government of the Generalitat and staff contracted under the labor law regime, subject in this case to the principle of publicity, of equality, merit and ability.

And, on the other hand, the Statutes of the entity formulating the consultation provide that legacy of civil servants, the entity's personnel will be governed by labor law.

Therefore, the personnel selection processes carried out by the entity, regardless of whether they are temporary or permanent personnel, must be subject, among other things, to the principles of publicity and transparency. According to what we will see, the applicable regulations do not differentiate the regime in the case that it is a selection process for temporary workers, or fixed workers.

#### IV

Article 45 of Law 39/2015, of 1 October, on the common administrative procedure of public administrations (LPAC), establishes the cases in which administrative acts must be published.

Article 45 of the LPAC provides for the following:

*“ 1. The administrative acts will be subject to publication when the regulatory rules of each procedure so establish or when it is advisable for reasons of public interest appreciated by the competent body.*

*In any case, the administrative acts will be subject to publication, giving effect to 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 single 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 .”*

And, article 44 of the LPAC, establishes:

*” When those interested in a procedure are unknown, the location of the notification is unknown or, if this was attempted, it could not be carried out, the notification will be made through an announcement published in the "Official Gazette of the State".*

*Likewise, previously and with an optional character, the Administrations may publish an announcement in the official bulletin of the Autonomous Community or of the Province, on the edict board of the City Council of the interested party's last domicile or of the Consulate or Consular Section of the corresponding Embassy.*

*The Public Administrations may establish other forms of complementary notification through the remaining media, which will not exclude the obligation to publish the corresponding announcement in the "Official Gazette of the State ".*

In accordance with these forecasts, the selective or competitive procedures are one of the cases of publication of administrative acts, in the terms established by the applicable regulations or, in the event that no forecast is established, in accordance with the that foresees the call.

Decree 28/1986, of January 30, of the Regulation for the selection of personnel of the Administration of the Generalitat of Catalonia, regarding the phase of admission of candidates, establishes among other provisions that the resolution of the same has to be published in the DOGC and which must indicate the place where the complete certified lists of admitted and excluded applicants are displayed to the public, indicating 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 adequate, relevant and limited to what is necessary in relation to the purposes for which they are tratados* ", it would be sufficient with the publication of admitted candidates, however, article 22 of Decree 28/1986 expressly provides for 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, in this phase of the procedure, unlike the phase of admission of applications, the rule only provides for the publication of the lists of approved applicants. In this case, from the point of view of data protection, the principle of data minimization would prevent the publication of the lists of suspended candidates.

In short, the principle of publicity in the personnel selection procedures of the entity that formulates the consultation, in accordance with these provisions, imposes on the body in charge of its implementation the obligation to publicize the process and the its regulatory bases, the lists of 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 determine where the publication will take place (art. 45.1.b) LPAC).

It should be noted that in cases where the regulations applicable to selective processes establish the need to publish an administrative act that does not require the inclusion of personal data (art. 5.1.c) of the RGPD), it must be avoided include any identifying data of the affected persons.

v

On the other hand, regarding the transparency regime applicable to selection processes, it is necessary to comply with the provisions of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC), and Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, RLTC).

Article 9 of the LTC, relating to the institutional organization and the administrative structure, provides that the administration must make public, among others, the calls for proposals and the results of the selective processes for provision and personal promotion (section 1 .e).

And, in turn, article 21.1 of the RLTC provides that, with respect to article 9.1.e) of the LTC, public administrations must publish the calls for proposals and the results of:

- "a) Procedures for access to the bodies and scales of official, statutory and labor personnel.*
  - b) Internal promotion procedures.*
  - c) Provisional and definitive provision procedures.*
  - d) Procedures for the selection of temporary staff or temporary workers, including temporary staff exchanges.*
- [...]"*.

In particular, article 21.2 of the RLTC establishes that:

*"The data to be published must refer, at least, to the announcement of the call, the bases, the official announcements and the name and surname and the four numbers of the national identity document or equivalent document of the persons admitted in each test or exercise of*

***the process and of the person finally selected, in accordance with the criteria established in the field of data protection. "***

On the basis of these articles, the transparency regulations provide that the data to be published must refer to the announcement of the call, the bases, the official announcements and the first and last name and the four numbers of the national identity document or equivalent document of the persons admitted to each test or exercise of the process and of the person finally selected. And, what is relevant for the purposes of this opinion, the publication must be carried out in accordance with the criteria established by the data protection regulations.

## VI

When, in accordance with what has been stated, it is necessary to notify those interested in a selection process of an administrative act through its publication, or through announcements, or to comply with the obligations that the regulations of transparency provided for in the field of advertising, with regard to the identification of the affected persons, additional provision seven of the LOPDGDD (from now on DA 7) must be taken into account.

The seventh Additional Provision of the LOPDGDD has come to specify, under the prism of proportionality, or minimization, a criterion that allows to reduce the impact that on the right to the protection of personal data has the legal provision to publish certain information that contains personal data.

The Seventh Additional Provision of the LOPDGDD establishes the following criteria:

*"1. When it is necessary to publish an administrative act that contains personal data of the person affected, it will be identified 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 announcements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, the affected person will be identified exclusively through the full number of your national identity document, foreign identity number, passport or equivalent document.*

*When the affected person lacks any of the documents mentioned in the two previous paragraphs, the affected person will be identified solely by means of 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 or is a consequence of the need to make a notification through announcements, to one or several interested parties, of an administrative act and, in particular, as a result of an "unsuccessful" notification provided for in article 44 of the LPACAP.

That is why we must distinguish:

a) When the publication of the administrative act that contains personal data that must be published for the purpose of publicity, of general knowledge by any person: the identification of the affected persons must be done in accordance with the which establishes the first paragraph of the first section of DA 7, that is, through the name and surname of the affected person adding four random numerical digits of the number of their national identity document, the foreigner's identity number, the passport or an equivalent document.

For the determination of these four figures, as a provisional criterion until there is a 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, have been adopted by the Spanish Data Protection Agency, the Basque Data Protection Agency, the Transparency and Data Protection Council of Andalusia and this Authority.

This guidance can be consulted on the Authority's website at the following link:  
<http://apdcat.gencat.cat/web/.content/01-autoritat/normativa/documentos/VAR-9-2019-orientacio-disposicio-addicional-7-cat.pdf>.

The joint adoption of this guiding criterion aims to prevent the adoption of different formulas in application of the aforementioned provision from giving rise to the publication of numerical figures 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 (for example, case of unsuccessful notifications of article 44 LPAC), the second paragraph of the first section of DA 7 has provided that the identification mechanism for the affected persons contains the minimum data necessary to allow them to know that the communication is addressed to them: the identification of the interested party must be done through the full number of their national document identity card, the foreigner's identity number, the 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) Cases in which the publication of the administrative act has a double purpose: on the one hand the purpose of notification, of knowledge by those affected that an administrative act has been issued that affects them and, likewise, a purpose of general knowledge by the entire population:  
in these cases the identification criterion must be the one established in the first paragraph of the first section of DA 7, in order to guarantee that any person can be aware of it. Therefore, it will be carried out by means of the name and surname of the person affected by adding four random numerical digits of the number of the national identity document, the foreigner's identity number, the passport or an equivalent document, taking into account, for to the

determination of the four random numerical figures, the Orientation referred to in letter a) of this Legal Basis.

This would be the case of the question raised, that is to say, of the personnel selection procedures. As a competitive competition procedure, the acts that make it up must be the subject of publication and this will have notification effects, bearing in mind that the call for the procedure must indicate *"the medium in which successive publications will be made"*, and also of means for general knowledge (article 45.1.b LPAC).

In this sense, the Judgment of the National Court, of April 26, 2012, highlighted that:

*"(...) In the present case, since it is a competitive competition procedure, we must attend to what is indicated in article 103 of the Constitution when it states that the Public Administration serves the general interests objectively and acts in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, with full submission to the law and the Law (paragraph 1) and when it states in paragraph 3 that "The law will regulate the status of public officials, access to public office according to the principles of merit and capacity. (...)"*

*From this point of view, we must conclude that the consent of those people who participate in a competitive competition procedure is not required for the treatment of the qualifications obtained in said procedure and it as a guarantee and requirement of the other participants to ensure the cleanness and impartiality of the procedure in which they participate. (...)"*

Consequently, it will be necessary to apply to these cases the mechanism for the publication provided for in the first paragraph of the first section of DA 7, that is, the identification by means of the name and surname of the person affected by adding four random numerical digits of the number of your national identity document, alien identity number, passport or an equivalent document, in accordance with the aforementioned Guidance.

However, in the case of excluded persons, it is sufficient to publish their identification number (without the first and last names), given that in this case the publication does not pursue general publicity but rather that the affected persons find out about their exclusion

In short, in personnel selection processes, the criterion to be followed for the identification of those interested in the process will be through the name and surname adding four random numerical figures of the number of the national identity document, the identity number of a foreigner, the passport or an equivalent document, taking into consideration, for the determination of the four random numerical figures, the guidance for the provisional application of the seventh additional provision of the LOPDGDD to which referenced above.

## VI I

What has just been exposed can be altered if among the people participating in the process there is someone who proves to be a victim of gender violence. In this case, what is analyzed below will have to be taken into consideration.

This Authority has had the opportunity to analyze which criteria must be followed, from the perspective of data protection, in cases where the publication of an administrative act or



announcement may affect a person who has certified the status of victim of gender violence. In particular, reference should be made to the opinion CNS 7/2021 and CNS 17/2021 (which can be consulted on the website [www.apdcat.cat](http://www.apdcat.cat)), regarding which we extract the following considerations:

*"(...) 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 the bodies with competence in the matter ."*

*At the date of issuance of this opinion, there is no evidence that protocol a has been drawn up what this provision refers to.*

*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 needs to protect the data of some groups, as is the case of 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 custody 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 male violence, establishes, as a guiding principle in the interventions of the public authorities, "the commitment active in guaranteeing the protection of the personal data of women in situations of violence (...)" (article 7.I).*

*Given this, (...), 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 that is carried out in the selection procedure. This means avoiding the publication of data that allows the affected person to be identified, either in a way direct or indirect, and that may generate a risk for your personal safety, like others unnecessary data (for example, the fact that the person is a victim of gender-based 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 allow to know or deduce his participation in the tests that follow, or in the case of the appointment, assigned destination.*

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

*" If the competent body deems 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 may 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 legitimate rights and interests of the interested party - as happens in this case with the participants who are victims of gender violence - this publication is carried out effectively without infringing such rights."*

With regard to the list of admitted persons and the publication of test results, it does not seem to raise doubts about the possibility of being able to publish the information of the affected person by means of a code that does not make it identifiable by third parties, such as it could be, for example, the code that is granted at the time of submission of the participation request.

Now, beyond the list of admitted people and in the publication of the results of the tests, it is necessary to consider whether this code can be used in the publication of the appointment resolution of the victims of gender violence.

*"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 Sentence 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. Now, 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 of the selective process - the special circumstances of the people who hold the condition cannot be ignored of a victim of gender-based violence, which also requires extreme guarantees of confidentiality of the data that allow their 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 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 record - with appropriate security measures - 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 in these legal foundations in relation to the query raised, the following are made,

## **conclusion**

The publication of personal data in personnel selection processes, regardless of the recruitment regime, must take into account data protection regulations.

When Decree 28/1986 applies, the list of people admitted and excluded from the selection process must be published, as well as the list of people who passed each test in order of score and the final list of people who passed by scoring order

Regarding the identification of the affected persons, when the purpose of the publication is to give general publicity and also when this purpose is accompanied by the notification to the affected persons, the identification of the affected persons must be done by means of the first and last name adding four random numerical figures from their national identity document or equivalent, in accordance with the Orientation to which reference has been

made. However, in the case of excluded persons, it is sufficient to publish their identification number, without the first and last name.

In the case of victims of gender-based violence, a code that cannot be deciphered by third parties must be applied, to protect their identity.

Barcelona, September 16, 2022

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