

Opinion in relation to the inquiry made by a Foundation in the educational field about the possibility of sending by email to families, based on a legitimate interest, information on the activities of external entities related to their own nature

A query is submitted to the Catalan Data Protection Authority by a Foundation in the educational field (hereinafter, the Foundation), in which an opinion is requested in relation to the possibility that the Foundation can send by email to families, based on a legitimate interest, information related to their own character.

According to the consultation, the Foundation's schools plan to inform families of various activities organized by third parties, such as leisure education activities, camps and camps, or pastoral activities, related to the school's own ideology. Christian school that characterizes the Foundation.

Having analyzed the consultation, in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, the following is ruled:

I

(...)

II

According to the query, the Foundation is dedicated to education and owns several educational centers in Catalonia.

The consultation adds that the Foundation is characterized by its idea of a Christian school - ideology subscribed to by the students, directly or through their representatives-, and that due to this character and own idea, the schools of the Foundation consider the possibility to inform families about activities organized by third parties, in particular, leisure education activities, camps and camps, or pastoral activities, related to the schools own ideology, which contribute to the comprehensive development of students .

The consultation cites some examples, such as sending information about pastoral activities; information on the Camps and Camps Group of one of the Foundation's schools - a leisure education entity which, according to the inquiry, has the same NIF as the school - which organizes a weekly outing, camps, camps and routes for school students during the month of July; information from a Christian non-profit organization; or information about an exhibition organized in a city museum, related to the Foundation.

The query asks if the activities described *"can be communicated by email to families, since there is a previous contractual relationship with them (educational activity under an accepted ideology), the data has been obtained lawfully and the communication is It is part of services*

similar to those that families have contracted. And, therefore, the processing of the personal data of the families (such as the email address) to send information about the activities of external entities, but which have a link with the foundation, would be protected based on the legitimate interest of the data controller, that is, the Foundation.”

With the consultation in these terms, it is necessary to start from the basis that, according to article 4.1) of Regulation (EU) 2016/679, of April 27, general data protection (RGPD), they are personal data . *any 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;*

All that information that refers to physical persons, specifically, students and their families, available to the Foundation and the schools that are part of it, such as the identification and contact details of these persons, is subject personal information to the principles and guarantees of the data protection regulations (RGPD and Organic Law 3/2018, of December 5, Protection of personal data and guarantee of digital rights (LOPDGDD)).

Therefore, any processing of personal data (art. 4.2 RGPD), of minors or their families, carried out by the Foundation's schools, must comply with the aforementioned principles and guarantees.

III

Regarding the legality of the treatment (art. 5.1.a RGPD), article 6 of the RGPD provides the following:

“1. The treatment will only be lawful if at least one of the following conditions is met:

- 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 in charge of the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

(...).”

At the outset, we note that having the consent of the natural persons affected (students and families), on the part of the Foundation, to send information about various activities organized by third parties related to the Foundation's own nature, would be a legal basis adequate and sufficient for the purpose subject to consultation, for the purposes of Article 6.1.a) RGD.

Thus, if the Foundation obtains the specific consent of those affected (Article 4.11 RGD), the sending, by the Foundation itself, of information on activities carried out by third parties related to the Foundation's own activities and nature, or other activities, would conform to the principle of legality.

Regarding this, and bearing in mind that the recipients of the information could be minors who are currently part of the school, we recall the provisions of article 7 of the LOPDGDD:

"1. The treatment of the personal data of a minor can only be based on his consent when he is over fourteen years old. The cases in which the law requires the assistance of the holders of parental authority or guardianship for the celebration of the legal act or business in whose context consent for the treatment is obtained are excepted.

2. The treatment of the data of minors under fourteen years of age, based on consent, will only be lawful if the holder of parental authority or guardianship is included, with the scope determined by the holders of parental authority or guardianship."

Therefore, the Foundation could collect the consent of the students of its schools, over 14 years of age, as well as of the families (fathers, mothers or guardians) in the case of children under 14, in order to be able to send them information about activities organized by third parties, related to the Foundation and the specific character of the schools.

As a general consideration, we also note that, from the perspective of the protection of personal data, in certain cases the Foundation may choose, where appropriate, to provide the information referred to in the consultation through usual communication channels with the families, such as the school website, the intranet, notice boards, etc.

Not only is this possibility not to be ruled out, but it is fully compliant with data protection regulations, since it would not be necessary to use the personal data of those affected for this particular purpose.

However, without prejudice to this possibility, or the concurrence of the legal basis of Article 6.1.a) RGD, the consultation refers specifically to the possibility of basing the treatment on the legal basis of Article 6.1. f) RGD -lawfulness of treatment based on legitimate interest-, an issue to which we refer below.

IV

Article 6.1.e) of the RGPD states that the legality of the treatment can be based on the need for the treatment to fulfill a mission carried out in the public interest or in the exercise of public powers by the person responsible for the treatment. Add that, according to article 6.3 RGPD, the basis of the treatment indicated in section 1, letters c) and e), must be established by the law of the Union or the Member States that applies to the person responsible for the treatment

Educational legislation enables the processing of personal data necessary in the context of the educational function carried out by schools. Specifically, additional provision twenty-three of Organic Law 2/2006, of May 3, on Education (LOE), establishes the following:

*"1. Educational centers may collect the personal data of their **students necessary for the exercise of its educational function**. Said data may refer to the origin and family and social environment, to personal characteristics or conditions, to the development and results of their schooling, as well as to those other circumstances whose knowledge is necessary for the education and orientation of the students.*

*2. The parents or guardians and the students themselves must collaborate in obtaining the information to which this article refers. The incorporation of a student into one teaching center will assume the treatment of its data and, in its case, the transfer of data coming from the center in which he had previously been schooled, in the terms established in the legislation on data protection. In any case, the information referred to in this section will be strictly **necessary for the teaching and guidance function, and cannot be treated for purposes other than education without express consent.***

(...)."

Therefore, the LOE enables educational centers, whether public or private, to processing of the personal data of its students and their families, which are necessary for the exercise of its educational and guidance function. Not only that, but the families have an obligation to collaborate with the centers, and to provide the necessary information for the fulfillment of this purpose by the centers.

Also, it can be understood that the centers are authorized to process the data necessary for the development and execution of the legal or contractual relationship that occurs following the enrollment of the students at the center (ex. art. 6.1.b) RGPD).

The specific data processing to which the query refers (that the centers can send families and students, directly, information about the activities of third parties), would not be strictly necessary to carry out the teaching function - understood, mainly, as educational function linked to the fulfillment of the school curriculum, nor for the fulfillment and execution of the contractual relationship between the center and the families. Therefore, this seems to exclude the possibility of applying the legal bases of article 6.1.b) and 6.1.e) RGPD to legitimize the treatment.

However, this does not exclude the possibility that the legal basis of article 6.1.f) RGPD may enable the treatment subject to consultation, in relation to private or contracted educational centers, when certain legitimate interests are involved. Thus, the treatment may be considered lawful, if it is necessary for the satisfaction of the legitimate interests of the person in charge or of a third party, when, after weighing with the rights and freedoms of the affected persons, it can be considered that they prevail over these .

We note that the provision of article 6.1.f) of the RGPD is not a novelty but that this same legal basis was previously provided for in article 7.f) of Directive 95/46/EC, d 'direct application in Spain, as recognized by the Judgment of the Court of Justice of the European Union of November 24, 2011.

The same RGPD (recital 47), gives as an example that could justify the application of the legal basis of legitimate interest the cases in which there is a previous relationship between the person in charge and the interested party, as happens in the case that we occupies, in which the recipients of the information would be the students themselves schooled in the educational centers - over 14 years old - and/or directly the families of these students (fathers, mothers or guardians).

Recital 47 emphasizes the need to carry out a *"meticulous assessment, even in those situations in which the interested party can reasonably foresee, at the time and in the context of the collection of personal data, that it may produce - a treatment for this purpose"*.

Thus, once the existence of a legitimate interest has been identified, a weighting of interests will need to be carried out to determine whether the legitimate interest is prevalent and, therefore, a sufficient basis for carrying out the treatment in question.

In the weighting or weighing test required by the application of Article 6.1.f) the criteria defined by the Article 29 Working Group (WG 29), which analyzed the application of the 'legitimate interest in the *"Opinion 06/2014 on the concept of legitimate interest of the data controller under Article 7 of Directive 95/46/EC"*. These criteria would be transferable to the regulation contained in article 6.1.f) of the RGPD to determine whether, in view of the specific circumstances of the case (the rights and interests involved, the reasonable expectations that those affected may have in the your relationship with the person in charge and the safeguards offered by the person in charge), this legal basis is appropriate.

Specifically, the legitimate interest of the person in charge or of third parties must be taken into account; the impact of the treatment on data subjects; and finally the additional guarantees that apply to the treatments.

We remind you that, as provided for in the RGPD, in accordance with the principle of proactive responsibility and transparency, this entire analysis process must be properly substantiated and set out in writing, in detail, in order to provide transparency and security legal to those affected, owners of the data, as well as to review and verify compliance and adequacy with what was determined, when necessary.

Legitimate interests pursued

First of all, it is necessary to take into account what would be the legitimate interests pursued by the Foundation, responsible for the processing of the data, taking into account the information available.

GT 29 refers to different weighting elements to assess the legitimate interest of the person in charge, among others, the *"juridical and cultural or social recognition of the legitimacy of the interests."* Specifically, it is pointed out that : *"(...) is, without a doubt, relevant if the legislation of the EU or the legislation of a Member State specifically allows (even though it does not require) that those responsible for the treatment adopt measures to pursue the public or private interest in question."*

In the case at hand, this weighting element should be placed in the normative context of the field of education.

According to article 121 of the LOE:

*"1. The **educational project** of the center will collect the values, goals and priorities of action, will incorporate the concretion of the curricula established by the educational Administration, which corresponds to set and approve the Senate, and will promote and develop the principles, objectives and methodology of a Competence learning oriented to the exercise of active citizenship. Likewise, it will include a transversal treatment of education in values, sustainable development, equality between women and men, equality of treatment and non-discrimination and the prevention of violence against girls and women, harassment and school cyberbullying, as well as the culture of peace and human rights.*

(...).

*6. The educational project of the **concerted private centers** , which in any case must be made public, will be arranged by its respective owner and will incorporate the proper character referred to in article 115 of this Law."*

According to article 115 of the LOE, mentioned:

*"1. The owners of the private centers **will have the right to establish their own character** which, in any case, must respect the rights guaranteed to teachers, parents and students in the Constitution and the laws.*

2. The nature of the center must be made known by the owner of the center to the different sectors of the educational community, as well as to those who might be interested in accessing it. Enrollment of a student will mean respect for the school's own character, which in turn must respect the rights of students and their families recognized in the Constitution and laws.

(...)."'

Likewise, in the area of Catalonia, Law 12/2009, of July 10, on education (hereafter, LEC), provides that the educational project of each center must incorporate, among others, criteria of pedagogical organization, educational priorities and approaches, inclusion procedures and

other actions that characterize the center, as well as the center's own character, if any (art. 91.4.f), LEC).

In addition, according to article 74.3 LEC: "*The owners of private centers have the right to establish the center's own character.*"

Therefore, given the available information, it seems that the Foundation's legitimate interest - as the inquiry itself points out - in communicating certain sporting activities to members of the educational community (families and students, if applicable) , recreational or pastoral and cultural, organized by third parties. The common characteristic that the activities that the consultation cites as an example would have, would be the link - either of the organizing entity itself, or of the theme of the activity - with the specific nature of the Foundation's schools, as mentioned by the own consultation

We note, therefore, for the purposes of the proportionality analysis that must be carried out, that the purpose pursued by the processing of the information would consist in the dissemination and communication to the educational community of information on cultural, religious activities - in this case , linked to the unique character of the Foundation-, of leisure and sports, whose legitimacy could be protected in principle, in the RGPD, if it is reconciled with the right to data protection, in the terms that we analyze below .

At this point, we cannot fail to analyze the concurrence of a possible legitimate interest, in this case, of those affected (families and students), when receiving the information subject to consultation.

It cannot be overlooked that the regulations recognize the right of families (parents and guardians) to receive information about the educational project and about the center's own character, as well as about the services offered by the center, among others (art. 25.1 LEC, sections a), b) and c)).

Consequences and impact of the treatment for the affected people

From the perspective of the necessary weighting, it is also necessary to identify the impact and consequences that the treatment could entail for the interested parties, for the purposes of considering whether the legal basis of article 6.1.f) of the GDPR applies.

In the light of the factors mentioned in WG 29, the nature of the processed data must be taken into account in the first place. In this sense, the processing affects the contact details of families and, where appropriate, of students over 14 years of age who may directly receive information about the activities of third parties. It does not, therefore, affect data of special categories (art. 9.1 RGP).

WG 29 also takes into account "*the way in which the data is treated, for example, if the data has been disclosed to the public or otherwise made available to a large number of people (...).*"

Likewise, it is appropriate to take into account another of the factors pointed out by WG 29, such as "*the reasonable expectations of the interested party, especially in relation to the use and disclosure of data in the relevant context*".

For weighting purposes, it is necessary to assess whether the treatment may entail an unnecessary intrusion into the rights or privacy of those affected.

Both the families of the students in the educational centers and, where applicable, the students themselves over the age of 14 - who can interact for themselves, more directly with the school, from the perspective of data protection -, they can have a reasonable expectation regarding the fact that their contact data, which the school legitimately has, will be processed within the limits of the regulations, and that this processing must not affect their privacy.

It should be borne in mind that the consultation does not propose a communication of the contact details of families and students to third parties so that they are the ones to contact those affected. On the contrary, it is expected that the Foundation itself will direct the information to families and students.

For weighting purposes, the fact that it is the Foundation itself that carries out the sending of information on activities linked to the school's own character, does not seem contrary to the reasonable expectations that interested parties may have regarding the use appropriate of your data.

In this sense, it should be borne in mind that the contact data, subject to treatment, is already subject to treatment by the Foundation, given the provisions of provision 23^a of the LOE, although, for different purposes, how would it be to comply to the teaching and guidance functions of the centers (eg art. 6.1.e) RGPD, cited). Or, if applicable, to comply with the contractual relationship with the families, such as for the invoicing of services, etc. (eg art. 6.1.b) RGPD).

It does not seem, therefore, that the sending of the information by the Foundation itself involves a treatment that may force or go beyond the expectations that families may have regarding the usual treatment of this data by schools.

In addition, in the case analyzed, and given the information provided, it seems clear that the inquiry refers in any case to entities linked to the Foundation itself (a playground and a group of camps and camps linked to schools), or activities of pastoral or cultural type also linked, in this case, to the specific character of the schools that are part of it.

In this sense, as has been said, the studied regulations recognize the right of families (parents and guardians) to receive information about the educational project and about the center's own character, as well as about the services offered by the center, among others (art. 25.1 LEC, sections a), b) and c)).

In this context, as long as the activities on which the Foundation informs are linked to the center's own character - which is part of the educational project -, it does not seem that this communication (and, therefore, the treatment of contact data by for this purpose), may force the expectations of those affected regarding the appropriate use of their data or, ultimately, their rights or interests.

It would be a different matter if the Foundation used the contact details to send information from entities unrelated to the schools themselves or of their own nature, for commercial, advertising purposes, etc. This possibility could indeed force the expectations of those affected on the fact that the processing of their data will remain within the purposes of the relationship with the school and the Foundation. This, unless the prior consent of those

affected is provided, in the absence of another sufficient legal basis. However, according to the available information, this type of communication is not what is being considered in the consultation.

We add that in this section GT 29 also takes into account the position of the data controller and the data subject, including the balance of power between the two, or if the data subject is a minor.

Taking into account the guarantees to which we will refer later, it does not seem that the fact that a school center provides information to families and, where appropriate, students, about social, pastoral, sports or cultural activities, linked to its own character, in which the recipients can decide to participate or not, leads to an imbalance, in the terms indicated by GT 29, which may make the treatment of contact data considered disproportionate.

Therefore, and taking into account the aforementioned regulatory framework, it does not seem that the expectations of privacy and lawful treatment of the personal data of those affected can be put at risk by the fact that the Foundation addresses information about the activities of third parties, as long as these entities and the activities reported on are linked to the centers, or are activities directly related to the educational project and to the centers' own (ideological) character.

Additional guarantees

The concurrence, as an adequate legal basis, of the legitimate interest of the Foundation (art. 6.1.f) RGPD), requires that, from the weighting between the elements that have just been exposed and the additional guarantees that are foreseen -in the terms of GT 29-, a prevalence in favor of the achievement of the legitimate interest pursued results.

As agreed by GT 29 in the aforementioned Opinion, the additional guarantees to prevent an undue impact on the interested parties include:

- *the minimization of data (for example, strict limitations on the collection of data or its immediate elimination after its use);*
- *technical and organizational measures to ensure that the data cannot be used for the purpose of adopting measures or taking other actions in relation to the people ("functional separation");*
- *extensive use of anonymization techniques, data aggregation, privacy protection technologies, privacy protection by design, impact assessments related to data protection and privacy;*
- *increased transparency, general and unconditional right of voluntary exclusion, portability of data and related measures to empower those interested."*

In the case at hand it has a special relevance to ensure that the affected people will have **the option to oppose the treatment** and to state that they do not want to receive information about the activities of third parties related to the Foundation and the specific nature of the schools.

As we have pointed out, in the case we are dealing with we cannot rule out the concurrence of a legitimate interest of the families and students themselves in receiving the information subject to consultation, as it is information directly related to the community's own character education of which they are part. However, regardless of this (or, precisely, in those cases where those affected consider that, even so, the information is not of interest to them), from the perspective of data protection there must be no obstacle for these people to exercise the right of opposition recognized by the regulations.

Thus, the data protection regulations provide that those affected, in this case, the families and, where appropriate, the minors to whom the information is addressed, can exercise their rights of access, rectification, deletion or opposition, among others, in relation to the processing of your personal data (art. 15 et seq GDPR).

With regard to the right of opposition, provided for in article 21 of the RGPD:

"1. The interested party will have the right to object at any time, for reasons related to his particular situation, to personal data concerning him being the object of a treatment based on the provisions of article 6, section 1, letters e) of), including the elaboration of profiles on the basis of these provisions. The person in charge of the treatment will stop processing the personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and liberties of the interested party, or for the formulation, exercise or defense of claims.

(...)."

Given that the treatment described in the consultation would have its legal basis in article 6.1.f) RGPD, the Foundation will have to provide an easy channel (or several) to be able to exercise the right of opposition to the treatment of your data of contact for this particular purpose, object of inquiry.

all the above, it is concluded that the treatment subject to consultation may have a sufficient legal basis (art. 6.1.f) RGPD) in order to communicate to families and, where appropriate, to students over 14 years of age, information on activities of entities external to the Foundation and that have a link with it, without having to obtain the consent of these people, as long as it refers to entities or activities linked or related to the specific nature of the Foundation's schools, the which, according to the regulations studied, forms part of the educational project of these.

conclusion

The communication by the Foundation to families and students over the age of 14, of information about the activities of external entities may have a sufficient legal basis in the legitimate interest (art. 6.1.f) RGPD), as long as refers to activities or entities linked or related to the specific nature of the Foundation's schools, and provided that the Foundation applies the specific guarantees set out in Legal Basis V of this opinion.

Barcelona, December 15, 2022

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