

Opinion in relation to the query made by the Data Protection Delegate of a department regarding the authorization to deal with special categories of data of people who participate in personnel selection processes through the recording of psychological assessment tests.

A query is presented to the Catalan Data Protection Authority by the Data Protection Delegate of a department regarding the authorization to treat special categories of data of people who participate in personnel selection processes through the recording of psychological assessment tests.

The consultation states that:

" Within the framework of the competences of the Department (...) in matters of prevention, extinguishing fires and rescue provided for in Decree 184/2022, of October 10, naming and determining the area of competence of departments in which the Government and Administration of the Generalitat of Catalonia are organized and in accordance with the legal provision of art. 17 of Law 5/1994, of 4 May, on the regulation of fire prevention and extinguishing and rescue services in Catalonia, it is up to the Councilor (...) to proceed with calls for access to the different categories of the Fire Brigade of the Generalitat de Catalunya and, therefore, establish the basis of the call.

(...)

In several selective processes that have been carried out to date, a psychological test has been carried out for applicants to the various categories of the Fire Brigade, although for a greater guarantee of the people interviewed, at the bases in the next call we want to introduce the image and voice recording of the interview . As progress has been made, this would have an impact on a greater guarantee for the candidates since it would facilitate a better knowledge of the conduct of the tests, would provide objectivity in the evaluation of the tests and, therefore, the entire selective process would gain in transparency and, in addition, it would serve as evidence to be used in possible subsequent appeals and, therefore, individuals could use the recording for the defense of possible claims. This test involves the participation of the selection board and a specialist adviser, whose profile allows for the best psychological assessment of applicants.

(...)

In relation to this, I request that you issue a report on:

1- If the legal authorization available to the person responsible for the treatment to carry out psychological tests in the selective process in article 17.6 of Law 5/1994, of May 4, is sufficient coverage to treat the special categories of data personal data, under article 9.2 of the RGPD

2- If yes, if this legal coverage is motivated by the fulfillment of obligations and exercise of specific rights of the data controller in the field of Labor Law and social security and protection or, in the formulation, exercise or defense of claims or when the courts act in the exercise of their judicial function.

3- Specific requirements necessary for the recording.

4- In the event that the only possible alternative for the treatment of special categories of data is the explicit consent of the persons interested, what should be the necessary requirements to be established for the alternative measures to guarantee their objectivity."

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

I

(...)

II

The DPD of the Department states that it is the responsibility of the Councilor to approve and establish the bases for calls for access to the different categories of a certain body of civil servants.

In relation to these calls, the DPD indicates that they are considering introducing in the bases of the next call the recording of the image and the voice of the interview corresponding to the psychological tests, for a greater guarantee of the people interviewed. It is argued in this respect that "*this would have an impact on a greater guarantee for the candidates since it would facilitate a better knowledge of the conduct of the tests, would provide objectivity in the evaluation of the tests and, therefore, the entire selective process would gain in transparency and, in addition, it would serve as evidence to be used in possible subsequent appeals and, therefore, individuals could use the recording to defend possible claims*". It is also specified that in this test the participation of the selection board and a specialist adviser, whose profile allows the best psychological assessment of the applicants, is planned.

With the consultation focused on these terms and in order to answer the questions raised by the DPD, it is necessary to analyze whether there is a legal basis for the processing of the data subject to the consultation, determine what this legal basis is and, if in addition to the legal basis the treatment that is to be carried out would comply with the rest of the principles and guarantees of the data protection regulations.

III

In accordance with the provisions of articles 2.1 and 4.1 of 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 circulation of this data and which repeals Directive 95/46/CE, from now on RGPD, the data protection regulations apply to the treatments that are carried out on any information "about a *person identified or identifiable physical 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* ".

So, the image and, where appropriate, the voice of the physical persons, in this case, of the participants in the personnel selection processes of the fire brigade, but also of the people who make up the qualifying tribunal of the selection process (if they are also captured), they are personal data subject to the principles and guarantees of the data protection regulations (RGPD and Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD).

Regarding the nature of the data consisting of the image and voice of natural persons, in principle, according to the RGPD they should not be considered special categories of data. In this sense, although article 4.14 of the RGPD establishes that it is biometric data: "*the data personal obtained from a treatment technician specific , related to the characteristics physical , physiological or behavioral characteristics of a natural person that allow or confirm the unique identification of said person, such as images facial or data fingerprints* ", recital 51 specifies that "*The treatment of photographs must not to consider systematically treatment of categories special data _ personal , because they only meet included in the data definition biometrics when the fact of being treated with means technicians specific allow identification or authentication _ univocal of a natural person*".

Therefore, image and voice are only considered to be biometric data when technical means are applied that allow the unequivocal identification or authentication of a natural person.

In this sense, points 10 and 12 of Directive 05/2022, of the European Data Protection Committee, approved on April 26, 2023, on the use of facial recognition technology in the law enforcement field, which highlight the difference between identification (aimed at verifying that a person is who they say they are) and authentication (aimed at finding a person among a group of individuals, within a specific area, an image or a database) to conclude that: "*Although both functions - authentication and identification - are different, they both relate to the processing of biometric data related to an identified or identifiable natural person and, therefore, they constitute a processing of personal data and, more specifically, a processing of special categories of personal data*".

That is to say, the image and voice of the people participating in a selective process as well as the data of the personnel who make up the qualifying board, in principle and by the mere fact of being captured , should not be considered a processing of biometric data (special categories of data), as long as these data are not treated with specific technical means in order to uniquely identify or authenticate the participants.

However, it must be taken into account that the psychological tests referred to in the query, which are carried out as part of a certain personnel selection process, collect health data

and, therefore, are considered special categories of data. For this reason, the eventual recording of the psychological tests of a personnel selection process will contain health data of the participants in that process and, for this reason, must be considered as a treatment of special categories of data.

With respect to the treatment of personal data, article 4.2) of the RGPD considers *““ treatment ”: any operation or set of operations performed on data personal or data sets _ personal , yes either by procedures automated or not, such as collection , registration, organization , structuring , conservation , adaptation or modification , extraction , consultation, use , communication by transmission , diffusion or any another form of enabling access , comparison or interconnection , limitation , suppression or destruction ” .*

Article 5.1.a) RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party. In order for this treatment to be lawful, one of the conditions provided for in article 6 RGPD must be met, with respect to which, in the case of public administrations, the conditions provided for in letters c) must be met in particular *“the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment ”* and letter e) *“ the treatment is necessary for the fulfillment of a mission made in interest public or in the exercise of powers public given to the person responsible for the treatment .”* It should be remembered that the treatment can only be based on these bases when a rule with the rank of law establishes it, as is clear from article 6.3 of the RGPD and expressly included in article 8 of the LOPDGGD.

In the case of special categories of data, in order to lift the prohibition of their treatment provided for in article 9.1 RGPD, it is necessary that, in addition, one of the circumstances provided for in article 9.2 RGPD occurs. Among which, for the purposes that concern us, it is necessary to take into consideration those provided for in the letters: *“ a) the interested party gives his explicit consent for the treatment of said personal data with one or more of the specified purposes, except when the Law of Union or States members establish that the prohibition mentioned in section 1 cannot be lifted by the interested party ”* *ib) “the treatment is necessary for the fulfillment of obligations and the exercise of specific rights of the person responsible for the treatment or the person interested in the in the field of labor law and social security and protection, to the extent that this is authorized by the Law of the Union of the Member States or a collective agreement in accordance with the Law of the Member States that establishes adequate guarantees of respect for rights fundamentals and interests of the interested party.”*

It is analyzed below whether the treatment that is the subject of the query can be protected by any of the legal bases provided for in the data protection regulations.

IV

The Royal Legislative Decree 5/2015, of 30 October, approving the revised text of the Law on the Basic Statute of the Public Employee (EBEP), applicable to civil servants and, in which is applicable, to the labor staff in the service of the Administrations of local entities (art. 2.1.c) EBEP), allocates chapter I of title V to regulate *“ Access to employment public and acquisition of the Service relationship ”*. In its article 55 it establishes that:

" 1- All citizens have the right to access public employment in accordance with the constitutional principles of equality, merit and capacity, and in accordance with the provisions of this Statute and the rest of the legal system."

"2. The Public Administrations, entities and organisms referred to in article 2 of this Statute will select their official and labor personnel through procedures that guarantee the constitutional principles expressed above, as well as those established below:

- 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 to be developed.*
- f) Agility, without prejudice to objectivity, in the selection processes."*

Specifically, with regard to the selective processes, article 61 of the EBEP establishes:

"1. The processes selective they will have character abierto and they will guarantee the libre concurrence , syn to the detriment of what is established for internal promotion and the measures of positive discrimination provided for in this Statute .

The selection bodies _ they will ensure compliance with the principle of equal opportunities between the sexes .

2. The selection procedures _ they will take care especially the connection between the type of tests to be passed and the adaptation to the performance of the tasks of the jobs convened , including , where appropriate , the tests practices that are accurate _

the tests may consist of testing the knowledge and analytical capacity of the applicants , expressed orally or in writing, in the performance of exercises that demonstrate the possession of skills and abilities , in the testing of language proficiency foreigners and, as the case may be, in passing tests physics _

(...)

5. To ensure the objectivity and rationality of the processes selective , the tests they can be completed by passing courses , internships , curricular presentation by candidates , tests psychotechnics or with conducting interviews . likewise they can demand acknowledgments doctors _

(...)"

For its part, 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 the field of public service, regulates the selection process of personal and establishes:

"In accordance with the principles enunciated by article 103.1 of the Constitution, the Administration of the Generalitat selects all its personnel with criteria of objectivity, based on the principles of equality, merit and capacity of the applicants, and through public call. In the selection process, knowledge of the Catalan language must be proven, both in oral and written expression." (Article 42).

In addition, the selection process must ensure that the aspects related to the capacity and suitability of the applicants in the development of public functions are analysed. Thus article 43 of Legislative Decree 1/1997 establishes:

*"In the selection of personnel, it is necessary to take into account the suitability of the selective system to the content of the jobs to be filled, so that the merits and experience of the applicants and their capacity are analyzed and suitability for the development of public functions. **In this sense, the selective procedures may include assessments of the experiences gained and theoretical knowledge, medical or physical tests, psychotechnical or professional tests, interviews, practical tests and, in general, other instruments that help to determine in a way objective the merits, capacity and suitability of the applicants in relation to the content of the jobs they have to occupy.** Also, alternative tests can be established within the same body or the same scale in relation to the corresponding specialties of the jobs that must be provided."*

In the case of fire brigade selection processes, Law 5/1994, of 4 May, on the regulation of fire prevention and extinguishing services, establishes in its article 17 that:

"-1 For access to the different levels and categories of the Generalitat's Fire Service, it is required to meet the requirements established by this Law and by the current regulations on public service of the Generalitat's Administration.

-2 To enter the different levels of the Generalitat Fire Brigade, you must possess the required qualifications or meet the requirements established by article 18 bis, in accordance with the following gradation:

a) Upper level, group A qualification.

b) Executive scale, group B qualification.

c) Technical scale, group C1 qualification.

-3 It is the responsibility of the person in charge of the Department of Governance to make calls for access to the different categories of the Generalitat's Fire Brigade.

-4 The bases of each call for access to the different categories of the Generalitat Fire Service must establish the specific requirements and conditions for admission to the different levels and categories of the Service. In no case can a limitation be established on the maximum age of entry different from that generally established for entry into the public service.

-5 If a call for access to the different categories of the Generalitat's Fire Brigade establishes the completion of a selective course, applicants who prove that they have

passed one with similar characteristics will be exempt. During the completion of the selective course, applicants are considered civil servants in practice.

-6 The selective tests for access to the different categories of the Generalitat's Fire Service are of a theoretical -practical nature and may include physical, medical, psycho-technical and knowledge tests .

But in addition, the selective processes are governed by what is established in their regulatory bases that must specify and develop the provisions of the civil service regulations and guarantee compliance with their regulatory principles.

As the jurisprudence of the Supreme Court has reiterated, the bases of the call "*constitute the law of the procedure*", the STS of May 27, 2010 can be cited for all, which recalls:

"(...) the uniform jurisprudential criterion that the bases for calling a contest or tests selective constitute the law to which the procedure and resolution thereof must be subject , in such a way that, once signed and consented to , they bind equally the participants and the Administration, as well as the Courts and Commissions in charge of the assessment of the merits (...)".

In the same sense the STSJ of Catalonia no. 156/2010, also includes:

" He must remember generically that the bases of the call they constitute the Competition Law , as hasta satiedad has come repeating our Supreme Court . That's how it comes pointing to this Room, likewise , in various ways resolutions , whose particular relative to this end they can synthesize in the doctrine that the parties and the Courts Qualifiers or the Selection Committee meet _ bound by what the rules of the call have , since it is our basic principle ordering legal that according to which the bases of a call for a process selective they bind the Administration, the Tribunals or Selection Commissions that must judge the tests and , finally , those participate in them . That is to say , it rules in ours Derecho the old axiom according to which , the bases of a call constitute the Competition Law " .

Therefore, it can be concluded that arts. 6.1.c) and 6.1.e) RGPD, i.e. the fulfillment of a mission in the public interest and the fulfillment of legal obligations of the data controller, in relation to the legal provisions of the EBEP, Legislative Decree 1 /1997, of 31 October, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in matters of public function and Law 5/1994, of 4 May, regulating services of fire prevention and extinguishing, with the particularities collected in each call, constitute the legal basis for the processing of the personal data necessary for carrying out personnel selection processes.

In addition, the specific provision for the treatment of health data that includes both the EBEP and Legislative Decree 1/199, as well as Law 5/1994 , of May 4, mentioned, to the extent that they include the possibility of carrying out of medical or physical tests, psychotechnical or professional tests, constitute the authorization for the treatment of these special categories of data in relation to article 9.2.b) of the RGPD, to the extent that the treatment is necessary for the compliance with the obligations of the data controller (in this case the competent department for calling and carrying out the fire brigade access tests) imposed by the public service legislation analyzed.

v

On the other hand, in relation to the specific consultation carried out by the DPD on the possibility of the consent of the interested parties being the legal basis for this treatment, the following considerations must be made.

First of all, as set out in ground IV of this report there is a sufficient legal basis that would enable the treatment subject to the consultation other than the consent of the interested parties, and, in any case, it does not appear that the consent of the participants in the selective process may be a valid consent under the terms of the RGPD.

To base the treatment of special categories of data on the consent of the interested parties, this consent must meet the requirements established in articles 4.11 and 9.2.a) of the RGPD and, therefore, must be a free and explicit consent .

Regarding the requirement that consent be free, Recital 43 of the RGPD states the following:

"[...] the consent [...] should not constitute a valid legal basis for the treatment of personal data in a concrete case in which there is a clear imbalance between the interested party and the person responsible for the treatment, in particular when said person responsible is a public authority and it is therefore improbable that consent was given freely in all the circumstances of that particular situation."

Regarding the free nature of consent, it is also necessary to take into account Guidelines 5/2020 of the CEPD. Of these Guidelines, for the purposes that concern us, the following should be highlighted:

"13. The term "free" implies real choice and control on the part of the interested parties. [...] if the subject is not really free to choose, feels obliged to give his consent or will suffer negative consequences if he does not give it, then the consent cannot be considered valid. [...] The notion of imbalance between the person responsible for the treatment and the interested party is also taken into account in the RGPD."

14. When assessing whether the consent has been given freely, the specific situations in which the consent is subject to the execution of contracts or the provision of a service must also be considered. In general terms, the consent will be invalidated by any inappropriate influence or pressure exerted on the interested party (which can manifest itself in many different ways) that prevents him from exercising his free will."

[...]

16. Recital 43 clearly indicates that it is not likely that the public authorities can rely on the consent to carry out the data treatment since when the person responsible for the treatment is a public authority, there is always a clear imbalance of power in the relationship between the responsible for the treatment and the interested party. It is also clear in most cases that the interested party will not have realistic alternatives to accept the treatment (the treatment conditions) of said responsible."

The ECPD considers that there are other legal bases that are, in principle, more suitable for the treatment of data by public authorities .”

On the basis of what has been explained, it does not seem that the legal basis of consent is suitable to legitimize the processing of the data of applicants for a selective process for the purpose described, given that it cannot be considered that in the case raised there could have been -there is truly free consent.

In this sense, it could be considered that there is free consent if the interested party has an alternative to fulfill the same purpose. It is the responsibility of the data controller to analyze whether there would be alternatives that would allow candidates for the selection process to fulfill the same purpose in the event that they do not give their consent to the recording of the tests. However, it seems difficult in the context of a personnel selection process that must guarantee, among others, the principles of equality and transparency and in which all applicants must have the same rights and guarantees, which are may have different means of guarantee depending on the choice of applicants.

In short, according to what has been explained, it does not seem that the treatment subject to the consultation can be based on the consent of the participants in the selection process.

VI

Although there is a legal basis that enables the processing of the health data of participants in a personnel selection process, it should be taken into account that any data processing, in addition to complying with the principle of legality, must respect the rest of principles and guarantees established by the data protection regulations (RGPD and LOPDGDD).

The principle of minimization requires that those responsible process only personal data that is *"adequate, relevant and limited to what is necessary in relation to the purposes of the treatment"* (art. 5.1.c) RGPD).

It cannot be ignored that the capture of the image and voice of the participants in a selective process entails in itself a more intrusive data processing than the carrying out of the tests without them being recorded. From the point of view of data protection, and in accordance with the principle of minimization to determine if the treatment is adequate, it is necessary to prove that there is a relationship of proportionality between the intended purpose and the way in which the data will be treated of the people affected, as there is no other more suitable measure.

As repeated jurisprudence has shown (for all, STC 39/2016, of March 3), in order to check whether a restrictive measure of a fundamental right respects the principle of proportionality, it must meet three requirements: that is capable of achieving the proposed objective (judgment of suitability); that it is necessary, in the sense that there is no other more moderate way to achieve this purpose with the same effectiveness (judgment of necessity); and, finally, that it is weighted or balanced, by deriving more benefits or advantages for the general interest than damage to other goods or values in conflict (proportionality judgment in the strict sense), that is to say, if the interference produced for said measure in the holder of

the right object of restriction is the minimum to achieve the legitimate purpose intended with its adoption.

The personnel selection procedures of public administrations are competitive procedures based on the principles of equality, merit and ability, transparency and publicity enshrined in article 103.3 in relation to article 23.2 of the EC and the aforementioned civil service regulations.

In addition to these principles, public administrations must guarantee that the selection procedures of their personnel guarantee the independence and technical discretion in the performance of the selection bodies, the adequacy between the content of the selective processes and the functions or tasks to develop, among others.

In this context, in order to determine whether the recording of the image and the voice of the psychotechnical tests is an appropriate measure, in the first place, analyze whether it passes the judgment of suitability, in the sense that it is suitable to achieve the 'proposed objective.

As indicated by the DPD in its consultation, the purpose of this treatment would be "*a greater guarantee for candidates since it would facilitate a better knowledge of the conduct of the tests, would provide objectivity in the assessment of the tests and, therefore, the entire selective process would gain in transparency and, in addition, it would serve as evidence to be used in possible subsequent appeals and, therefore, individuals could use the recording to defend possible claims*". Certainly, in the case at hand, the recording of the image and the voice of the psychotechnical tests is a measure that allows us to have evidence that the test was carried out and that it has been carried out respecting the principles applicable to the selective processes.

It must be emphasized that the selective processes of the public administrations must be carried out in such a way as to ensure compliance with the principles of merit and ability, among others, as has been collected by extensive jurisprudence, by all means cite Sentence n.º 1290/2020, of October 14 of the TS, which annulled a selective process to understand that the absence of pre-established parameters and criteria for how the interview should be carried out, as well as scoring criteria, denatured the selection process and that, in addition, there was no test that could be fulfilled in order to assess the adequacy of the knowledge and abilities of the applicants.

In this sense, it can be concluded that the recording of the tests may be necessary and suitable as a means of proof for the exercise of their rights by the aspirants to the selective process as well as so that the court can justify the assessment carried out.

Secondly, it is necessary to carry out the judgment of necessity that allows it to be determined that there is no more moderate measure for the achievement of the purpose pursued with the same effectiveness as the recording of the tests carried out.

Given the nature of the tests to be carried out, it does not seem possible to justify the existence of a more moderate measure that would achieve the same objective with the same effectiveness. In this sense, there are already precedents for the recording of this kind of evidence in police selection processes. In this regard, the Judgments n.º 266 and 267, of May 17, 2022 of the Superior Court of Justice of the Basque Country, were pronounced on the interviews in the training course for the Officers of the Police Forces of the Basque

Country. In these judgments the court recognizes the relevance of the recording of the interview understanding that it is the only way to be able to evaluate it in a jurisdictional seat when its assessment is disputed. Thus, the court makes the following considerations:

"Of those precisions, the relevance of the recording of the interview is drawn as a conclusion , which is the only form that allows it to be evaluated in the terms that were pertinent in the jurisdictional seat , when su is impugned assessment _

We must agree with the appeal that the absence of recording prevents and limits the appellant from being able to fully exercise the right to effective judicial protection, which leads to the fact that, for the purposes that concern us , he cannot consider that the motivation requirement is met in this case , in the terms we have ratified following the jurisprudential doctrine of the Supreme Court .

The availability of means to materialize the recording of the interview , regardless of whether it is not required _ expressly the bases of the call".

Finally, it is necessary to determine whether the measure is weighted or balanced, to derive more benefits or advantages for the general interest than harm the right to data protection of the persons concerned.

In this case, it seems that the measure could bring more benefits in the event of a conflict regarding the final result of the test that harms the people affected. It must be taken into consideration that, in short, the recording of the data of the participants in the selection processes, provided that, as will be explained below, the regulatory bases provide for it with the corresponding guarantees, they must bring benefits to the interested parties to the extent that it will be information that can be provided by them in case of litigation about the result of the process.

In any case, it is up to the body in charge of approving the basis of the call to carry out this weighting judgement, which, we already advance that, as analyzed in the foundation VII of this report, will have to be carried out within the framework of the corresponding Data Protection Impact Assessment (AIPD).

Finally, it must be emphasized that once the proportionality judgment has been passed, the basis of the call for the recording of the psychotechnical tests must establish the specific guarantees for the treatment of personal data. Among other aspects, the bases must determine the security measures that will be implemented, the retention period which, in any case, must not be longer than what is necessary to fulfill the purpose for which the data have been collected or recorded, or the limitation of their access to the interested persons and to the courts and tribunals to deal with possible challenges to the procedures, etc.

VII

In relation to the need to draw up an AIPD, article 35 of the RGPD establishes the obligation of those responsible for the treatment to carry it out prior to the start of the treatment, when it is likely that for their nature, scope, context or purposes entail a high risk for the rights and

freedoms of natural persons, a high risk which, according to the RGPD itself, is increased when the treatments are carried out using new technologies (section 1).

For its part, article 28.2 of the LOPDGDD lists some cases in which the existence of a high risk for the rights and freedoms of people is considered probable, among which, " cuando se produjese un tratamiento *no merely incidental or accessory to the special categories of data referred to in articles 9 and 10 of Regulation (EU) 2016/679 and 9 and 10 of this organic law or of the data related to the commission of administrative infractions*" (letter c) or "*when the treatment involves an evaluation of personal aspects of those affected in order to create or use personal profiles of them, in particular through the analysis or prediction of aspects related to their performance at work, their economic situation, their health, your personal preferences or interests, your reliability or behavior, your financial solvency, your location or your movements* " (letter d)

In addition, to make it easier for data controllers to identify those treatments that require an AIPD, the RGPD provides that the control authorities must publish a list of the treatments that require an AIPD. This Authority considers that it is necessary to carry out an AIPD for the treatments included in the following [list](#), available on the Authority's website.

In the present case, it must be taken into consideration that the circumstances referred to would concur, to the extent that it must be understood that it would entail an assessment of subjects (the applicants) and the collection of data on their personality , in short, special categories of data, using technological means.

Consequently, in this context, the need to carry out an AIPD prior to treatment is clear. For these purposes, it may be of interest to consult the Practical [Guide on impact assessment relating to data protection](#), available on the Authority's website.

Conclusions

The processing of the data necessary for carrying out the tests of the personnel selection processes, including the health data of the participants, has as its legal basis the fulfillment of a mission in the public interest and the fulfillment of specific obligations of the competent administrations established by the civil service regulations.

The recording of the psychotechnical tests requires, in addition to their provision in the corresponding bases of the calls (with the specification and determination of the necessary specific guarantees), the prior completion of an AIPD.

It does not seem that the legal basis of consent is suitable to legitimize the processing of the data of applicants for a selective process for the purpose described, given that it cannot be considered that in the case presented there could be truly free consent, nor the possibility of establishing alternative means that guarantee the principle of equality that must govern the selective procedures.

Barcelona, June 6, 2023

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