

Deliberation 2020-045 of April 23, 2020 National Commission for Computing and Liberties Nature of the deliberation:

Authorization Legal status: In force Date of publication on Légifrance: Saturday July 11, 2020 Deliberation No. 2020-045 of April 23, 2020 authorizing the early dissemination of documents administrative files kept by the departmental archives services of Pyrénées-Orientales and Aude.

(Request for opinion n°19020974)

The National Commission for Computing and Liberties, Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to the automatic processing of personal data; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; Having regard to the code heritage, in particular its articles L. 213-1 and L. 213-2; Having regard to the code of relations between the public and the administration, in particular its articles

L. 312-1-2 and D. 312-1-3; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms; Having regard to decree n° 2019-536 of Amended May 29, 2019 taken for law enforcement

n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to deliberation n° 2018-101 of March 15, 2018 providing an opinion on a draft decree issued for the application of article 6 of Law No. 2016-1321 of October 7, 2016 for a Digital Republic; Having regard to the referral from the President of the Aude Departmental Council of July 23, 2019 and the amending referrals of February 4 and 19, 2020; Having regard to the referral from the President of the Pyrénées-Orientales Departmental Council of July 26, 2019 and the amending referrals of January 31 and February 7, 2020; After hearing Mrs. Anne DEBET, Commissioner, in her report, and Mrs. Nacima BELKACEM, Government Commissioner, in her observations, Formula the following observations: Initially received two requests for authorization for early online publication of documents kept by the departmental archives of Aude and Pyrénées-Orientales solely in the context of commemorating the ear of corn historical ode known as the Retirada, the Commission notes that this authorization request, sent pursuant to the provisions of point b) of 9° of article D. 312-1-3 of the code of relations between the public and the administration (CRPA), now aims to allow the advance online dissemination of administrative documents kept by these two public archive services relating to the internment camps installed on their respective territories, independently of the single historical episode of the Retirada. In particular, it takes note of the clarifications provided by the Pyrénées-Orientales

Departmental Council, which indicated that the request for authorization for early online dissemination concerned the early online publication of data appearing in documents relating to the Argelès camps. -sur-Mer, Rivesaltes, Saint-Cyprien, Le Barcarès, Collioure and Arles-sur-Tech for the entire period of the Second World War. The Commission also notes that it has been specified that the documents concerned cover a period between February 1939 and November 1942. Similarly, it notes that the request sent by the Aude departmental council relates to the data contained in documents kept by its departmental archives concerning the camps of Bram, Couiza-Montazels and Montolieu. The Commission takes note of the details provided by the department that these camps received only Spanish refugees between February 1939 and January 1941. On a preliminary basis, it observes that the distribution of the documents envisaged by these two departments received the support of several organizations such as the Association of former Spanish guerrillas in France – French Forces of the Interior Aude, the Memorial Association of the Paths of Republican Exile in Aude (AMCERE¹¹), the association FFREEE (Filles et fils de Spanish Republican children of the exodus) or the Rivesaltes Camp Memorial and by the town of Argelès-sur-Mer. several consultations carried out, formulate the following observations and recommendations in order to delimit the scope of the authorization issued. It recalls that it is important to reconcile the interest of the early dissemination – for the public – of the aforementioned documents with the protection of the personal data of the persons concerned and, where applicable, the privacy of their successors. rights or surviving relatives. On the nature of the data concerned and the rights of individuals In general, the Commission notes first of all that the documents whose dissemination is envisaged are likely to contain a great deal of personal data, of various kinds, in because of the diversity of their methods of collection from the persons concerned. These documents are thus likely to contain sensitive data within the meaning of Article 9 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 referred to above (GDPR) and article 6 of the law of January 6, 1978 as amended, as well as personal data relating to criminal convictions, offenses or 2 related security measures, within the meaning of Article 10 of the GDPR and Article 46 of the law of 6 January 1978 as amended, relating to persons interned in the camps covered by this authorization and over the periods covered. Commission does not intend to call into question the public interest represented by access to these documents, it recalls that it will be up to each subsequent processing manager to ensure that it complies with the applicable regulations and, in particular, to its ability to process such categories of data, in accordance with Article 9 of the GDPR and Articles 44 and 46 of the law of 6 January 1978 as amended. The Commission also considers that the dissemination of the requested documents should be subject to special vigilance, in particular to ensure that

no data relating to the state of health of the persons concerned is disseminated. In this regard, it takes note of the information communicated by the departmental councils of Aude and Pyrénées-Orientales according to which all the documents whose distribution is envisaged are already freely available for consultation in the reading room or communicated on request in accordance with the provisions of Articles L. 213-2 of the Heritage Code and L. 311-9 of the CRPA and that, consequently, these documents should not contain data relating to the state of health of the persons concerned. However that, in the event that the documents contain such data, they would not be freely accessible until the expiry of a period of twenty-five years from the date of the death of the person concerned or one hundred- twenty years from the date of birth of the person in question if the date of death is not known, in accordance with the provisions of Article L. 213-2 of the Heritage Code, and should therefore not make the subject of an earlier broadcast under this authorization. With regard to the possible impact on the privacy of the persons concerned, their relatives or assigns of the requested dissemination, the Commission also invites the departments concerned to make available to the public information issued in educational terms aimed in particular at explaining the context of the initial production of the documents whose distribution has been authorized, the value to be attributed to the data they contain, particularly in the presence of sensitive data, as well as the legal framework in which such early dissemination. The Commission also points out that if, in principle, the provisions of the regulations relating to data protection are not intended to apply to the deceased persons to whom the documents disseminated relate, it is necessary to apply these provisions when the processing of data of deceased persons is likely to have the consequences on the private life of their heirs or relatives. In this respect, it considers that it is not possible to exclude that these relatives or heirs wish to complete the history of the person concerned or of the document whose dissemination is authorized or that they wish to oppose the dissemination of data likely to infringe their privacy. Under these conditions, the Commission considers it essential that the latter be able to exercise their rights under the conditions provided for by the applicable regulations and that, in the event that the departments concerned intend to mobilize any derogations, these be precisely justified and strictly within the framework provided for by the GDPR and the amended law of 6 January 1978. It recalls in this respect that the procedures for exercising these rights must be brought to the attention of the persons concerned under conditions likely to guarantee their effectiveness. On the measures recommended for the advance dissemination of documentsThe Commission recalls that it has ruled on several occasions on the guarantees to be implemented in order to accompany the procedures for the dissemination and reuse of personal data and, in particular, in the context of deliberation no. 2018-101 of March 15, 2018 referred to above. It recalls that it is indeed a

question of materializing the balance to be organized between the requirements of a collective memory, access to information which must be part of a context of transparency as well as sensitivity, the case where appropriate, of a family memory which may be revived by some of the information contained in the documents disseminated. The Commission considers in this respect that, insofar as the early dissemination of the documents requested is likely to expose the persons concerned who are still alive, their relatives or dependents to a potential risk of invasion of their privacy and the protection of personal data, safeguards must be provided in the context of the planned dissemination. In particular, the Commission invites data controllers to accompany the documents with information recalling that their anticipated distribution has been subject to prior authorization and that any reuse of these data is subject to respect of the legal framework in force on the protection of personal data. Beyond this preliminary general recommendation and insofar as the documents covered by this authorization are likely to contain sensitive data or data relating to criminal convictions and infringements, it also recommends the deployment of a system making it possible to prevent any automatic aspiration of data by computerized programs (such as a non-intrusive captcha system). The Commission also recommends putting in place measures preventing the indexing, on external search engines, of directly identifying data. These measures may consist of the use of correctly defined indexing rules for search engines (such as a robots.txt file). to limit their potentially intrusive nature, for example by not allowing full-text searches or to carry out requests relating to data defined in Articles 9 and 10 of the GDPR, by not submitting to the Internet user suggestions of terms most frequently searched for or by requiring the search engine to enter at least two data: a surname and a first name or a date or place of birth or origin. In any event and without prejudice to the foregoing, the Commission recalls that it is up to the data controller responsible for the advance dissemination to assess, in the light of the conditions provided for in Article 35 of the GDPR, the need to carry out an analysis impact relating to the protection of personal data and to take appropriate measures to deal with the risks that the processing is likely to generate for the rights and freedoms of the persons concerned. Authorizes, in accordance with this deliberation, the departments of Aude and Pyrénées-Orientales, to disseminate in advance the personal data relating to persons interned in the camps established on their respective territories contained in administrative documents kept by their archive services. The President

Marie-Laure DENIS