

938-0419

Procedure No.: PS/00361/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and
based on the following

BACKGROUND

FIRST: On 05/29/2018, a claim was received from Ms. A.A.A. in which
states that he filed an application for an opposition of the Higher Body of
Technicians in Penitentiary Institutions (BOE X/XX/2018) and in the publication of the BOE
of YY/YY/2018 there is a list that includes name and surname, DNI and the age at
through the date of birth.

He adds that, in the GOOGLE search engine, typing his name brings up the referral
to your data in the BOE of said call.

Submit a copy of:

- Instance of registration for the convocation of the Higher Body of Technicians of
Penitentiary Institutions, free shift, date of call of the BOE X/XX/2018.
- Photograph of a mobile phone showing a message from 05/22/2018, from
removals@google.com informing them that their request will be processed.

SECOND: On 06/26/2018, a letter was sent to the Protection Delegate of
Data to detail

1. Clear specification of the causes that have motivated the incidence that has
gave rise to the claim.
2. Detail of the measures adopted by the person in charge to solve the
incident and to prevent new incidents from occurring such as the
exposed.

3. Documentation proving that, in accordance with the provisions of the article 12 of the RGPD, the appropriate measures have been taken to facilitate the affected the exercise of their rights under articles 15 to 22, including a full copy of the communications sent in response to the requests made.

4. Documentation proving that the right of the claimant to be informed about the course and outcome of this claim.

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The claimant was informed of the referral of the request for information on 06/27/2018.

THIRD: On 07/02/2018, the respondent indicates that it has only been transferred to the Secretary General of Penitentiary Institutions and GOOGLE has not been required and requests that it be removed from the search engine pages.

FOURTH: Dated 08/08/2018, a letter from the Protection Delegate has been received of Data of the Secretary General of Penitentiary Institutions that indicates that after receipt of the claimant's brief, a copy was sent to the Subdirector General for Penitentiary Human Resources as the main person responsible for the treatment of the data, and that the age data will be excluded as it is not relevant for said lists.

Accompanying your letter is another from the aforementioned Subdirector General, indicating that the data of date of birth is extracted from the request for participation in the processes selective, and the information is channeled through the database enabled to such effect with which the provisional and definitive lists that

they are subsequently made public.

“The date of birth is taken into account to verify compliance with the requirement demanded for access to the public function, however, is a fact that does not brings added value in the listings, therefore, accordingly, the measure adopted to avoid this situation consists in carrying out a modification of the personal database of the applicants who participate in the processes elections that are convened”.

FIFTH: On 11/20/2018, the GOOGLE search engine is accessed and typing the name and surname of the claimant, there is a reference to BOE.es, from YY/YY/2018. I know click and you get the resolution of the Undersecretary of the Ministry of the Interior for the that the provisional list of admitted and excluded is published and the date is announced, time and place of celebration of the first exercise of the selective process convened by the Undersecretary herself, by resolution of 03/22/2018.

In the resolution, the data of the claimant is contained in annex II "list provisional of excluded jurists" where surnames and name appear, DNI without letter, date of birth, language, and numerical code of exclusions. As grounds for exclusion the claimant appears "lack of language to carry out the third exercise"

In another list appears "Disability reserve" and handicap with a figure which could be the percentage of the recognized. Other causes listed are “higher income in the monthly calculation of the minimum interprofessional salary” or “lack job application certification.

SIXTH: The Resolution of 03/22/2018, of the Undersecretariat, by which the selective process for entry, by the general system of free access in the Corps Superior of Technicians of Penitentiary Institutions, specialty of Jurists and Psychologists., BOE X/XX/2018 indicates that the "common bases by which the this call are those established in Order HFP/ 688/2017, of 07/20

("Official State Gazette" of 07/22)

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The specific base 8.2 of the resolution of 03/22/2018 indicates that: "Expired on deadline for submitting applications, a resolution will be issued within a maximum period of one month, declaring approved the list of admitted and excluded. In said Resolution, which will be published in the "Official State Gazette", the list of applicants will be indicated excluded, the places where the lists are exposed to the public lists of applicants admitted and excluded, as well as the place, date and time of beginning of the first exercise."

From the payment of fees are exempted, among others, people with a degree of disability equal to or greater than 33 percent, the people who appear as jobseekers for at least one month prior to the date of the call, large families and victims of terrorism.

On the other hand, Order HFP/688/2017, of 07/20, which establishes the common bases that will govern the selective processes for entry or access in bodies or scales of the General State Administration indicates that its purpose is the "Establishment of the common bases that will govern the selective processes for the income or access as a career official in the Bodies and Scales of the General State Administration, without prejudice to the specific bases that determine each call, which in its case will include the peculiarities regarding these common bases

Said order indicates: "Fourth. Publicity of calls and monitoring of selection processes. Calls for selective processes will be published, in addition to the «BOE», on the web page corresponding to the convening body and that is indicated in the specific bases, as well as in Point of General Access administracion.gob.es. The calls of the processes

selective for access by internal promotion will also be published on the Portal

Works. The convening body will send to the mailbox Empleopublico@correo.gob.es

information on the development of the selective processes as they are

advancing them, in order to allow a follow-up of their execution.”

In the twelfth base it is indicated:

“two. The option to these reserved places will have to be formulated in the request for

participation in calls. Those who request to participate for the reserve quota of

Persons with disabilities, whether general or intellectual, may only

apply for this quota. Violation of this rule will determine the exclusion

of the aspirant who had not observed it.”

At no point in the common or specific bases is it made

reference to the information of the data that is collected, nor specification of the data of

the handicap, its use or as it is understood granted the express consent and in

What phases of treatment?

SEVENTH: On 12/11/2018, an initiation agreement was issued with the literal:

“1. START SANCTION PROCEDURE against the GENERAL SECRETARY

OF PENITENTIARY INSTITUTIONS, (MINISTRY OF THE INTERIOR) by the

alleged infringement of article 5.1 c) of the RGPD, and of article 9.1 of the RGPD, of

in accordance with the provisions of article 58 section 2 b) of the RGPD....

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-THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1/10 LPACAP and

article 58.2 letter b) RGPD, the sanction that could correspond would be

WARNING, without prejudice to what results from the investigation.”

- REQUEST the claimed party to certify before this body the

compliance with the following measures:

-Urge the BOE so that the data sent and that appear in it do not

can be indexed by search engines such as GOOGLE in this case.

-Adapt the data processing in the phases of the selective processes of

in accordance with the principles indicated in the RGPD.

EIGHTH: On 12/26/2018, a written document of the claim is registered in which it indicates:

a) The procedure that has now been opened results in an incident

occurred prior to the entry into force of LO 3/2018 of 5/12. A

Despite this, an attempt has been made to correct the incident. As communicated

by the Data Protection Officer.

b) Some elements are published, such as the date, which is a requirement that

used to verify that one of the access requirements to the

public function. It was agreed that the publication of the date of birth data

It is not relevant to make it appear in the lists that are published in the

listings that they send to the BOE, the databases that are

used to make the lists.

c) On 12/10/2018 the BOE informed your entity that in accordance with the da

seventh of LO 3/2018, a series of measures will be adopted that will

influence the notification procedure that will be published in the BOE of

so that the complete DNI with the name and surnames would not be published together.

d) On the exposure of health data for the purposes of the call,

consider that it is covered by the joint reading of article 9.3 of the

Article 9.2 of Regulation (EU) 2016/679 of the European Parliament and of the

Council of 04/27/2016 regarding the protection of natural persons in the

regarding the processing of personal data and the free circulation of these

data and repealing Directive 95/46/EC (General Regulation of data protection RGPD) and Organic Law 3/2018, of 5/12, on the protection of personal data and guarantee of digital rights, BOE 6/12/2018.

NINTH: On 04/23/2019, the testing period opens:

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It is AGREED to carry out the following tests:

1.

two.

The filed claim and its documentation, documents obtained and generated.

Likewise, it is considered reproduced for evidentiary purposes, the allegations to the initiation agreement PS/00361/2018 presented by the respondent and the documentation that accompanies them.

3. GOOGLE is accessed, BOE of 06/21/2016 and the Resolution of 06/16/2016, of the Secretary of State for Public Administrations, by which approves the model application form for admission to selective tests in the General Administration of the State and liquidation of the rate of examination fees.

It appears among other aspects that "In compliance with Organic Law 15/1999, of December 13, Protection of Personal Data, we inform you that your personal data will be incorporated into a file whose owner will be the center manager of the selection and appointment process, being able to exercise the rights of access, rectification, cancellation and opposition in the management center that appears in the announcement." There is also the clause "CONSENT that the managing center of the selection and appointment process access the databases of the Administrations, with a guarantee of confidentiality and for the exclusive purposes of facilitate the verification of personal identification data, qualifications and condition

job seeker consigned in this instance. Additionally, it will consult the condition of disability and large family if these conditions have been accredited in any of the Autonomous Communities that appear in the address <http://administracion.gob.es/PAG/PID> (If you do not consent, mark the box and must, in this case, provide supporting documentation, all in the terms and deadlines provided in the bases of the call and other regulations valid)."

In another section, the applicant's signature appears.

4. GOOGLE is accessed and with the name and surname of the claimant, a search figuring your data in relation to the BOE.

In the first, the title:

-BOE.es - Document BOE-A-2018-QQQQ

<https://www.boe.es> › BOE › Calendar › YY/YY/2018

ZZ/ZZ. 2018 - A.A.A.. ***NIF.1. 12/15/1961. 0. 16. 15. 100. B.B.B.. ***NIF.2. 12/30/1983. English. 0.

Pressing, the https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018- appears.

QQQQ which is the Resolution of ZZ/ZZ/2018, BOE XX/XX of the Undersecretariat, by which the list of admitted and excluded is approved and the date is announced, time and place of celebration of the selective process for entry, by the system general free access, in the Technicians of Penitentiary Institutions,

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specialties of Jurists and Psychologists, summoned by Resolution of 03/22/2018 and that contains the data object of this procedure.

-The second,

PDF-Provision QQQQ of BOE no. 2018 PPP - BOE.es

<https://boe.es/boe/dias/20XX/XX/18/pdfs/BOE-A-2018-QQQQ.pdf>

XX/XX. 2018 - A.A.A.. ***NIF.1 12/15/ ... C.C.C. . . . D.D.D.

By clicking on it, you access [https://boe.es/boe/dias/20XX/XX/18/pdfs/BOE-](https://boe.es/boe/dias/20XX/XX/18/pdfs/BOE-A-2018-QQQQ.pdf)

A-2018-QQQQ.pdf, containing the same resolution, in PDF

5 In addition, within a period of ten days, the claimed party will have to provide or report of:

a) In relation to the data obtained in the claimant's GOOGLE search engine,

entering your name and surnames that lead directly to the publication of the

provision of the BOE in which your personal data appears, you are requested to

report of the mechanisms used to avoid the indexation of the data of the

claimant in the search engines, taking into account the information on the files

robots.txt operating on GOOGLE.

b) The respondent is requested to submit a request to participate in the process

selective object of the claim, whether electronic or on paper.

c) The respondent is requested to inform the reason, convenience, or legal provision

that may cover the publication in the Official State Gazette of a list

of provisionally excluded in the selection process, in order to remedy,

especially if it contains health data such as disability. Additionally,

if not, the scope of the affectation of the publication could be restricted exclusively

interested parties through an electronic platform, since the transparency of the

process affects only applicants.

d) Since the degree or percentage of disability is a health data, they must

inform about how the express consent of the participants is obtained in the

applications for participation in the selection processes, what information is derived from

that collection and if they consider necessary the exhibition in the BOE or web with accesses to third parties of the disability data or alternatives, in the excluded phase provisional and in other phases.

e) Inform if the selection process object of the complaint has ended, its date.

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The petition by the defendant was not granted.

6 The OFFICIAL STATE GAZETTE AGENCY is hereby informed that the claimant, entering A.A.A. in GOOGLE check that your data appears related to a provision published in the BOE on XX/XX/2019. Specific:

FIRST RESULT:

-BOE.es - Document BOE-A-2018-QQQQ

<https://www.boe.es> › BOE › Calendar › YY/YY/2018

ZZ/ZZ. 2018 - A.A.A.. ***NIF.1. 12/15/1961. 0. 16. 15. 100. B.B.B.. ***NIF.2.

12/30/1983. English. 0.

Pressing, the https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-QQQQ appears, which is the Resolution of ZZ/ZZ/2018, BOE XX/XX of the Undersecretary, by which approves the list of admitted and excluded and announces date, time and place of celebration of the selective process for entry, by the general system of free access, in the Technicians of Penitentiary Institutions, specialties of Jurists and Psychologists, convened by Resolution of 03/22/2018 and containing the subject data of this procedure

- SECOND RESULT:

-PDF-Provision QQQQ of BOE no. 2018 PPP - BOE.es

<https://boe.es/boe/dias/20XX/XX/18/pdfs/BOE-A-2018-QQQQ.pdf>

XX/XX. 2018 - A.A.A.. ***NIF.1 12/15/ ... C.C.C. . . . D.D.D.

By clicking on it, you access <https://boe.es/boe/dias/20XX/XX/18/pdfs/BOE->

A-2018-QQQQ.pdf, containing the same resolution, in PDF.

Regarding these indexations, you are requested to:

6.1-Who is the original responsible that gives rise to or enables said data to be
can be indexed by search engines?

On 05/23/2019, a letter was received in which, after mentioning Law 39/2015
and Royal Decree 364/1995 finds a legitimate basis to publish in the BOE the
claimant information.

It adds that article 14.4 of Royal Decree 181/2018 establishes that the AEBOE
will adopt measures aimed at avoiding the automatic indexing and recovery of
verification codes from notification ads.

6.2-How is it definitively solved that such indexing is possible?

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They indicate that in compliance with article 11 of Royal Decree 181/2018," the dissemination
of the BOE on the Internet is carried out universally, except as provided in relation to
with the notification supplement. Consequently, the rest of the contents
of the BOE can be captured by Internet search engines and in general by
reusers of public information". "However, the AEBOE does not include any
type instruction/invitation code intended for internet search engines to
that these index the content of the official newspaper of the State or maintain any type
of relationship or agreement with the aforementioned search engines"

6.3- What own mechanisms have been implemented as responsible for the
platform to prevent access to the Official Gazette from occurring directly through
through search engines?

States that in compliance with article 14.4 of Royal Decree 181/2008, which provides that the AEBOE adopt measures aimed at avoiding the indexation and recovery automatic notification ads verification codes, the AEBOE uses the robots protocol. txt to the entire content of the notification supplement of the BOE. In accordance with the explanatory statement of RD 385/2015 of 05/22, the modulation of the possibilities of access to the notifications supplement is a consequence of the peculiarity of its content: the notification ads come to replace a personal notification, acting as a guarantee mechanism for interested parties specific, so they do not require the same degree of publicity as the provisions and administrative acts that are published in the rest of the sections of the newspaper. In addition, to the supplement of notifications, the AEBOE applies the aforementioned protocol to specific documents, at the request of the interested parties, in compliance with the doctrine established by the AEPD. "The AEPD in various resolutions has considered that the citizen cannot oppose the maintenance of their personal data in the BO, as it is perfectly legitimate because it is protected by the law that orders the publication of the acts and provisions but that the citizen can oppose in cases where there is a legitimate and well-founded reason for your data to be personal data are subject to treatment consisting of allowing the indexing of their data published in the official gazette, preventing its possible capture by the Internet browser".

The AEBOE applies the robots protocol. txt to the requests to exercise the right to the protection of personal data that it receives and in which the stated reasons.

In the case of the claimant, they "have not received any request in relation to the resolution of ZZ/ZZ/2018. Notwithstanding the foregoing, this Agency remains at the disposal of what the AEPD can resolve in the procedure."

TENTH: Dated 05/27/2019. is incorporated into the procedure because it is related with its object, the resulting access through the web, of the BOE of 06/4/2018, on the resolution of the Undersecretariat, approving the final list of excluded, from the selective process for entry, by the general system of free access, in the Higher Corps of Technicians of Penitentiary Institutions, specialties of Jurists and Psychologists, summoned by Resolution of 03/22/2018. If you compare the provisional and final lists, all excluded, it can be seen that in the first

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there were 25 in legal specialties, in the final only 12, and there were also substantially reduces the number of excluded in the specialty of psychology, observing that also in this it is reduced in a person who has remedied in disability shift and does not appear on the final list of excluded, then meets the requirement, which was number 12 with which it appeared on the provisional list: Missing justification disability and / or without certifying.

ELEVENTH: On 05/29/2019, a resolution proposal of the literal:

1- That by the Director of the Spanish Agency for Data Protection sanction the GENERAL SECRETARIAT OF PENITENTIARY INSTITUTIONS, with NIF S2813060G, for an infringement of Article 9.1 of the RGPD, typified in Article 83.5 of the RGPD, a warning fine.

2- That the Director of the Spanish Agency for Data Protection sanction the GENERAL SECRETARIAT OF PENITENTIARY INSTITUTIONS, with NIF S2813060G, for an infringement of Article 5.1.c) of the RGPD, typified in the Article 83.5 of the RGPD, a warning fine.

3 -

REQUIRE

INSTITUTIONS

PENITENTIARY to certify to this body compliance with the following measures:

GENERAL SECRETARIAT OF

a

-Urge the BOE so that the data sent and that appear in it do not can be indexed by search engines such as GOOGLE in this case.

-Adapt the data processing in the phases of the selective processes of in accordance with the principles indicated in the RGPD.

4- In accordance with the provisions of article 77.4 and 5 of the LOPDDG:

"4. The resolutions that

fall in relation to the measures and actions referred to in the sections previous.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions issued under this article."

Against it, allegations are received on 06/14/2019 in which it indicates that

At the time the events take place, the provisions had not been fully implemented.

GDPR principles, it was intended to make the process more transparent. They have

modified the way in which the data has been published successively. attach

copy of the letter of 06/13/2019 addressed to the AEBOE in order to deindex the

search engines, the content of the results of the query with the data of at

claimant take directly to the BOE in which said data appears

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PROVEN FACTS

The claimant submitted her application for the call to the selective process of the

1)

Superior Corps of Technicians in Penitentiary Institutions (BOE X/XX/2018).

two)

The call for access to the Higher Corps of Technicians in Institutions

Prisons (BOE X/XX/2018) provides for the publication of personal data in

the base specifies 8.2 that: "Once the deadline for submitting applications has expired,

will issue a resolution, within a maximum period of one month, declaring approved the list of

admitted and excluded. In said Resolution, which will be published in the «Official Gazette of the

State", the list of excluded applicants will be indicated, the places where they are

The complete lists of admitted applicants and

excluded, as well as the place, date and time of beginning of the first exercise.

In the BOE of YY/YY/2018, the Resolution of ZZ/ZZ/2018 is published,

3)

of the Undersecretariat, of the Ministry of the Interior approving the list

provisional, in this case excluded and the date, time and place of celebration is announced

of the first exercise of the selective process for entry, by the general system of

free access, in the Higher Corps of Technicians of Penitentiary Institutions,

specialties of Jurists and Psychologists, summoned by Resolution of 03/22/2018,

solving:

second

"Publishing the provisional list of those excluded from the reference selective process,

that appears as annexes III and IV of this Resolution, with an expression of the causes of

exclusion (Annex V). In annex II Provisional list of excluded. consist of

data of first surname, second name and name, DNI without the letter, date of birth, language that can be English, Italian and exclusion code that can be 2, 4, 5, 7, 9, 10, 15, 16. In another listing with the same content entitled "reservation disability" appear in the disability column the numbers 33, 36,38, 47, 65 and in exclusions the numbers 12 or 16. The same types of data appear in the other specialty of psychology in Annex IV."

third

"All the excluded opponents, as well as those omitted for not appearing in the published provisional list have a period of ten business days, counted from from the day following the publication of this Resolution in the "Official Gazette of the State", to correct the defects that have motivated its exclusion or omission.

The applicants who within the indicated term do not correct the error or omission, justifying their right to be included in the list of admitted, will be definitively excluded from carrying out the selective tests. Completed on period indicated, the final list of admitted applicants will be made public, which will be will exhibit in the same Centers that are indicated in the second section of this Resolution.

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By means of the keys contained in annex IV, it is possible to know the causes of exclusion that the petitioners requested and are understood not to have been fulfilled, among which would relate the petitioner to the alleged cause, by way of example:

3. Missing employment demand certificate, or incomplete certificate.

5. There is no certificate of not having rejected suitable employment offers, nor that has refused to participate in promotion, training or reconversion actions professionals.

7. Lack of seniority required in INEM.

10. Large family and/or unverified family justification missing.
- 11.Expired large family title.
12. Lack of disability justification and/or without certifying.
14. Lack of accreditation as a victim of terrorism and/or unverified document.
15. Income higher in monthly computation than the Minimum Interprofessional Salary.
16. Lack of language to carry out the third exercise.

As for the figure that appears in the handicap column that goes or starts from

33 with cases of 47 or 65 denotes the degree of disability.

In addition, if the call is monitored, it could be consulted in the

the same way the list of final admitted, being able to find out which person of the

listing has corrected (either by providing the certificate or otherwise, and it is therefore

really a handicapped of the degree that is expressed). In the same sense, it

contain data on the degree of disability to which what remains to be corrected by

example is the language, number 16, appearing in the list of handicaps with the grade,

with which their health information is known. (This is how at least two applicants appear).

Likewise, the websites of the convening centers have complete information

of the process, with all phases and all accesses open to the public in

general, with which it is possible to carry out a follow-up even of a certain

person and their data, and if the query is configured through the DNI, this is already

known.

In the specific bases it appears that they are exempt from the payment of fees

among others, people with a degree of disability equal to or greater than 33 percent

percent, people who appear as job seekers for at least one

month before the date of the call, large families and victims of

terrorism.

4)

On 11/20/2018, it was verified in the GOOGLE search engine that typing the name and surname of the claimant, there is a reference to BOE.es, of YY/YY/2018, containing the resolution of the Undersecretary of the Ministry of the Interior by which The provisional list of those admitted and excluded is published and the date, time and place of celebration of the first exercise of the selective process summoned by the own Undersecretary, by resolution of 03/22/2018. Despite requiring in the start-up agreement

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the claimant to urge the BOE so that the data sent and that appear in it cannot be indexed by search engines such as GOOGLE in this case, no response received.

5)

Order HFP/688/2017, of 07/20, which establishes the bases

that will govern the selective processes for admission or access to bodies or

scales of the General Administration of the State indicates: "Fourth. Advertising of the

Calls and monitoring of selection processes. The calls for

selective processes will be published, in addition to the «BOE», on the website

corresponding to the convening body and that is indicated in the specific bases, as well

as in the General Access Point administracion.gob.es. The calls of the

selective processes for access by internal promotion will also be published in the

Portal

mailbox

employmentpublico@correo.gob.es information on the development of processes

selective as they progress, in order to allow a

follow-up of its execution.

convening body

will forward to

Works.

The

In the twelfth base on reservation for the disabled, it is indicated:

"two. The option to these reserved places will have to be formulated in the request for

participation in calls. Those who request to participate for the reserve quota of

Persons with disabilities, whether general or intellectual, may only

apply for this quota. Violation of this rule will determine the exclusion

of the aspirant who had not observed it."

At no point in the common or specific bases is it made

reference to the type of data contained in the excluded lists, or the

additional information associated with these data, nor necessary specification about the

publication in lists of excluded or admitted of the special data of the

disability of the petitioners that are going to carry out, treatment and its use, nor

How the express consent is understood to be granted and in what phases of the treatment.

As highlighted, from the Resolution of 03/22/2018, of the Undersecretary for the

6)

that the selective tests were convened, it was indicated:

Specific basis 1

Of the total number of places called for free access, 2 places will be reserved, of which

which 1 place in the specialty of Jurist and 1 place in the specialty of

Psychologists, for those who have the legal status of persons with disabilities with

a degree of disability equal to or greater than 33%. In the event that any of

applicants with disabilities who had applied for the reserve quota

overcome the exercises and did not obtain a place in the aforementioned quota, being his score superior to that obtained by other applicants of the general access system, this will be listed by their scoring order in the general access system.

6.1 Applications must be completed using the official application form 790, at which will be accessed, in general, through the website www.administracion.gob.es or the electronic records for processing the inscriptions of the candidates in the selective processes that are established. 6.2 The Applications will preferably be submitted electronically. The presentation of the

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application by electronic means will be made using the service Enrollment in Selective Testing Processes of the

(<http://administracion.gob.es/PAG/ips>), following the instructions indicated, being It is necessary to identify yourself through the identification and electronic signature platform cl@ve, in any of its modalities.

main access point

6.2 Applications will preferably be submitted electronically.

the

in

that

figure

Autonomous

6.6 The following shall be exempt from payment of the exam rights fee: a) Persons with a degree of disability equal to or greater than 33 percent, and must accompany the application certificate accrediting such condition. It will not be necessary to submit this certified when the disability condition has been recognized in any of the

Communities

address

<http://administracion.gob.es/PAG/PID>. In this case, and prior agreement of the

concerned, the managing body may verify this condition by accessing the

Public Administration Data Intermediation Platform offered to

through the service Enrollment in Selective Tests. b) The people who appear

as jobseekers for at least one month before the date of the

announcement. They will be requirements for the enjoyment of the exemption that, in the term that

in question, had not refused an offer of suitable employment or refused to

participate, except for just cause, in promotion, training or

professional reconversion and who, likewise, lack higher incomes, in computation

monthly, to the Minimum Interprofessional Salary. These extremes must be verified, in

in any case and unless there is express opposition from the interested party, by the managing body

through access to the Data Intermediation Platform of the

Public Administrations offered through the Test Registration service

Selective. In case of not giving consent, the certification regarding the condition

of job seeker, with the indicated requirements, it will be requested in the office of

public employment services. Regarding the accreditation of income,

will be carried out by means of a certificate of the filed declaration of the Tax on the

Income of Individuals, corresponding to the last financial year and, where appropriate, of the

certificate of income level. c) Large families under the terms of article

12.1.c) of Law 40/2003, of November 18, on the Protection of Families

numerous. Members will be entitled to a 100% exemption from the fee.

of families in the special category and a bonus of 50% for those who were

of the general category. The status of a large family will be accredited through the

corresponding updated title. The contribution of the large family title will not be

necessary when the same has been obtained in any of the Communities

Autonomous that appear at the address <http://administracion.gob.es/PAG/PID>. In this

case, and unless there is express opposition from the interested party, the managing body may

verify this condition by accessing the Intermediation Platform of

Data from Public Administrations. d) Victims of terrorism, understanding

as such, people who have suffered physical or psychological damage such as

as a consequence of the terrorist activity and thus accredit it by means of a judicial sentence

firm or by virtue of an administrative resolution that recognizes such condition, its

spouse or person who has lived with a similar emotional relationship, the

spouse of the deceased and children of the injured and deceased.

If any applicant that appears on the list of provisionally excluded

corrected and did not appear in the final list of excluded, having been admitted,

with the established system of including name and surnames and DNI could also,

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know which person it is by comparing the lists that can also be

check on platforms such as the general access point administracion.gob.es.

or on the website of the convening center.

7)

In the call resolution of the Undersecretary of the Ministry of the Interior

The person responsible for data processing is not identified, it is only specified that "In all

case, the request will be addressed to the General Secretariat of Penitentiary Institutions". In

standardized forms approved to submit applications and payment of fees in

selective process includes the literal "In compliance with Organic Law 15/1999, of

13/12, Protection of Personal Data, we inform you that your data

will be incorporated into a file whose owner will be the management center of the selection and appointment process, being able to exercise the rights of access, rectification, cancellation and opposition in the management center that appears in the announcement." According to the statements of the respondent, the database that manages the process is located the General Subdirectorate of Human Resources Penitentiaries.

8)

In the GOOGLE search engine, as of the test practice date 04/23/2019, Entering the name and surname data of the claimant, it is verified that in the two first results that are produced, is indexed to the BOE of 06/18/2018 in the that the data of the claimant appears as provisionally excluded, her full name and DNI, date of birth, that you have submitted your application to the body of penitentiary institutions legal specialty and the reason for exclusion, for not select the language.

The section in which the data of the claimant is published in the BOE

9)

en Authorities and personnel, Oppositions and contests.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016 regarding the protection of natural persons with regard to the processing of personal data and the free circulation of these data (hereinafter GDPR); recognizes each authority of control, and according to the provisions of articles 47 and 48 of Organic Law 3/2018, of 5/12, of Protection of Personal Data and guarantee of digital rights (in what

hereinafter LOPDGDD), the director of the Spanish Data Protection Agency is competent to initiate and resolve this procedure.

II

As a reference framework for the use of data, Law 39/2015, of 1/10 of the

Common Administrative Procedure of Public Administrations indicates:

article 13:

“Those who, in accordance with article 3, have the capacity to act before the Public Administrations, are holders, in their relations with them, of the following

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Rights:

h) To the protection of personal data, and in particular to the security and confidentiality of the data contained in the files, systems and applications of Public Administrations.”

At the time of the events, article 28 of the same Law indicated:

Documents provided by the interested parties to the administrative procedure

3. The Administrations will not require the interested parties to present original documents, except that, exceptionally, the regulatory regulations applicable state otherwise.

Likewise, the Public Administrations will not require data or documents not required by the applicable regulatory regulations or that have been previously provided by the interested party to any Administration. To these effects, the interested party must indicate at what time and before which administrative body presented the aforementioned documents, and the Public Administrations must collect them electronically through their corporate networks or by consulting the data intermediation platforms or other electronic systems enabled by effect. It will be presumed that this consultation is authorized by the interested parties, unless

your express opposition is recorded in the procedure or the applicable special law requires express consent, and must, in both cases, be previously informed of your rights regarding the protection of personal data.

Exceptionally, if the Public Administrations could not collect the aforementioned documents, they may ask the interested party again for their contribution.”

article 40.5 Notification:

5.

“Public Administrations may adopt the measures they consider necessary for the protection of personal data contained in the resolutions and administrative acts, when these are addressed to more than an interested party.”

Article 46 of the LPCAP adds a common denominator applicable to both notifications as well as publications, of the following tenor:

“If the competent body appreciates that the notification by means of announcements or the publication of an act harms rights or legitimate interests, it will be limited to publishing in the corresponding Official Gazette a brief indication of the content of the act and of the place where the interested parties may appear, within the period established, to knowledge of the full content of the aforementioned act and proof of such knowledge.”

III

In accordance with the principles of proportionality and necessity, it is considered that the claimed has violated the principle of data minimization that is contained in the article 5.1.c) of the RGPD with the tenor:

"1. The personal data will be:

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c) adequate, relevant and limited to what is necessary in relation to the purposes

for those who are treated”

The content is related to article 25 entitled “Data protection

from design and by default” indicating that

"1. Taking into account the state of the art, the cost of the application and the

nature, scope, context and purposes of the treatment, as well as the risks of various

probability and seriousness that the treatment entails for the rights and freedoms of

natural persons, the data controller will apply, both at the time of

determine the means of treatment as at the time of the treatment itself,

appropriate technical and organizational measures, such as pseudonymisation, designed

to effectively apply the principles of data protection, such as the

minimization of data, and integrate the necessary guarantees in the treatment, in order to

comply with the requirements of this Regulation and protect the rights of

interested.

2. The data controller will apply the technical and organizational measures

with a view to guaranteeing that, by default, they are only processed

the personal data that is necessary for each of the specific purposes of the

treatment. This obligation will apply to the amount of personal data collected, to

the extension of its treatment, its conservation period and its accessibility. Such

measures shall in particular ensure that, by default, personal data is not

accessible, without the intervention of the person, to an indeterminate number of people

physical.”

In principle, the provisional list of those excluded must not appear published in

the BOE, but refers to the fact that "Once the deadline for submitting applications has expired,

will issue a resolution, within a maximum period of one month, declaring approved the list of admitted and excluded” A provisional list is not the definitive list, on the provisional corrections and corrections can be made.

Likewise, the public call would affect the participants in the process.

Just as the call does not indicate in detail how the publication, access to such data should be limited to participants in the process, so that only the participants in it could view the data, since only the participants in the process are considered interested, or which is not happens in this process

Next, the data that is exposed does not have to be so detailed that bivalently identify the participants, in this case they were identified not only with the name and surnames but with the NIF.

Next, the exposed data is exceeded when the date of birth, element that is not necessary and outlines another additional data along with the nif and the name and surnames.

The fact that the provisional list of those admitted to any person, and in this case in the BOE it supposes an excessive sending of data that will be able to be seen by anyone (limitation to those affected), but the same is You can tell from the definitive admissions lists.

IV

17/23

The data minimization design has been embodied in the LOPDGDD, which in its “Seventh additional provision: on Identification of the interested parties in the notifications through announcements and publications of administrative acts” indicates:

1. When it is necessary to publish an administrative act that contains personal data of the affected party, it will be identified by its name and

surnames, adding four random numerical figures of the national document of identity, foreign identity number, passport or equivalent document.

When the publication refers to a plurality of affected these random figures they should alternate.

When it comes to notification through advertisements, particularly in the assumptions referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, will be identified to the affected party exclusively by means of the complete number of his national document identity card, foreign identity number, passport or equivalent document.

When the affected party lacks any of the documents mentioned in the two preceding paragraphs, the affected party will be identified only by name and surnames. In no case should the name and surnames be published together with the complete number of the national identity document, identity number of foreigner, passport or equivalent document.

2. In order to prevent risks for victims of gender violence, the Government will promote the development of a collaboration protocol that defines procedures insurance of publication and notification of administrative acts, with the participation of the bodies with competence in the matter.”

The provision has been the subject of a provisional recommendation until the moment in which the governing bodies and public administrations authorities approve provisions for the application of the aforementioned Provision Additional seventh. So objective is to try to prevent the adoption of different formulas in application of the aforementioned provision may give rise to the publication of figures numerical identification documents in different positions in each case, allowing the complete recomposition of said documents.

For your interest, the aforementioned recommendation of 03/04/2019 is transcribed, entitled:

“GUIDANCE FOR THE PROVISIONAL APPLICATION OF THE PROVISION

ADDITIONAL SEVENTH OF THE LOPDGDD”

“In the Spanish Agency for Data Protection, the Catalan Authority for Data Protection, the Basque Data Protection Agency and the Council of Transparency and Data Protection of Andalusia, multiple queries have been received on the application of the provisions of the first paragraph of the first section of the Seventh additional provision “Identification of the interested parties in the notifications through advertisements and publications of administrative acts” of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights.

This circumstance has advised that, in order to facilitate a practical criterion, said authorities propose guidance for the provisional application of guarantees of protection of the disclosure of the national identity document,

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foreign identity number, passport or equivalent document of the interested.

To do this, they have randomly selected the group of four numerical figures to be published for the identification of those interested in the publications of administrative acts. The procedure for the random determination of the four numerical figures to be published of the identification code of an interested party performed through the process of random selection in an opaque bag of a ball of between five balls numbered from 1 to 5, held on 02/27/2019 at the AEPD.

The resulting ball was number 4, therefore:

The publication of national identity document, identity number of foreigner, passport or equivalent document may be made in the following way:

- Given a DNI with format 12345678X, the digits will be published in the format occupy the fourth, fifth, sixth and seventh positions. In the example: ***4567**.
- Given a NIE with format L1234567X, the digits will be published in the format occupy the positions, avoiding the first alphabetic character, fourth, fifth, sixth and seventh. In the example: ****4567*.
- Given a passport with format ABC123456, having only six figures, will be published the digits that occupy the positions in the format, avoiding the three characters alphabetical, third, fourth, fifth and sixth. In the example: *****3456.
- Given another type of identification, as long as that identification contains at least 7 numeric digits, these digits will be numbered from left to right, avoiding all alphabetic characters, and the procedure of publishing those numeric characters that occupy the fourth, fifth, sixth and seventh positions.

For example, in the case of an ID like XY12345678AB, the post would be: *****4567***.

- If that type of identification is different from a passport and has less than 7 digits numeric, all characters, including alphabets, will be numbered with the same number. previous procedure and those who occupy the last four will be selected. positions. For example, in the case of an ID such as ABCD123XY, the publication would be: *****23XY.

- Alphabetic characters, and those numeric characters not selected for their publication, they will be replaced by an asterisk for each position.”

Therefore, in addition to introducing the aforementioned measures in general, if to publish or notify any act, it must be taken into account in addition to these references, a special diligence for the possible identification or identifiability to

through other direct or indirect references that are not name and surnames or NIF

and that allow the person to be identified.

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v

In addition to the data of the date of birth, the name and surnames appear

complete, together with the DNI number, as well as the disability with its degree of

petitioners, which is considered a health fact. According to the interpretation that

must be given to the RGPD is health data, according to recital 35:

“Personal data relating to health must include all data

related to the state of health of the interested party that give information about their state of

physical or mental health past, present or future. Information is included about the

natural person collected on the occasion of their registration for health care purposes,

or on the occasion of the provision of such assistance, in accordance with Directive

2011/24/EU of the European Parliament and of the Council; any number, symbol or data

assigned to a natural person who uniquely identifies him/her for purposes

toilets; information obtained from tests or examinations of a part of the body or

of a body substance, including from genetic data and samples

biological, and any information relating, by way of example, to a disease, a

disability, risk of disease, medical history, treatment

clinical or physiological or biomedical state of the data subject, regardless of their

source, such as a doctor or other health care professional, a hospital, a device

doctor, or an in vitro diagnostic test.”

In this case, the percentage of disability data is associated with the cause

12 or 16 of exclusion, in some cases as "lack of disability justification or without

certify, but there are also disabled in which only the cause of

exclusion 16 as “language selection missing”. SE observed as at least one

person does not appear in the definitive list of excluded, that is to say, it is accredited that he complies the disabled requirement in the required degree. In this case, it insists on the lack of proportionality of disclosing to any person in the BOE said data in the cited listed when the scope of the participants is exceeded and with the name and surnames and DNI, offering full identification to any person, and must also limit such excess identification.

SAW

Regarding the collection and processing of data from special categories such as are those of handicaps, for participation in selective processes, it is observed that in the bases of the call there is no mention of the information on the treatment of said data, which are of a different nature from the rest of the data.

In this regard, recital 39 of the RGPD indicates:

“All processing of personal data must be lawful and fair. For the people physical data must be made absolutely clear that they are being collected, used, consulted or treating in another way personal data that concerns them, as well as the extent in which said data is or will be processed. The principle of transparency requires that all information and communication regarding the processing of said data is easily accessible and easy to understand, and that simple and clear language is used. Saying principle refers in particular to the information of the interested parties on the identity of the person in charge of the treatment and the purposes of the same and to the information added to ensure fair and transparent treatment with respect to natural persons affected and their right to obtain confirmation and communication of the data personal data that concern them that are subject to treatment. natural persons

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must be aware of the risks, standards, safeguards and rights regarding the processing of personal data as well as the way to assert their rights in relation to treatment. In particular, the specific purposes of the processing of personal data must be explicit and legitimate, and must be determined at the time of collection. Personal data must be adequate, pertinent and limited to what is necessary for the purposes for which they are treated. This requires, in particular, ensuring that their use is limited to a strict minimum. conservation period. Personal data should only be processed if the purpose of the processing treatment could not reasonably be achieved by other means. To ensure that personal data is not kept longer than necessary, the person responsible for the treatment must establish deadlines for its suppression or periodic review..."

Indicates article 9.1, 2 a) and g) of the RGPD: "The treatment of personal data revealing ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation, and data processing genetic, biometric data aimed at uniquely identifying a person data, data relating to health or data relating to sexual life or orientation sex of a natural person.

2. Section 1 shall not apply when one of the circumstances following:

a) the interested party gave their explicit consent for the processing of said data for one or more of the specified purposes, except when the Right of the Union or the Member States establishes that the prohibition referred to in the section 1 cannot be lifted by the interested party;

g) the treatment is necessary for reasons of an essential public interest, on the basis of the law of the Union or of the Member States, which must be proportional

the objective pursued, essentially respect the right to data protection and establish adequate and specific measures to protect the interests and rights fundamentals of the interested party;

The respondent does not report the treatment of the data of the applicants who choose by the disability system, providing data on the degree of disability. It can't be done infer that the processing of your data is appropriate to this type of data, as it does not be informed in any way about the purpose of said data and that the provision of the consent must be express, without the signature of the application request being such, not contain an end that refers to said data.

7th

Article 103.3 CE provides that "the law shall regulate the status of civil servants public, access to the public function in accordance with the principles of merit and ability...". Article 55.2 of Law 7/2007, of 12/04, of the Basic Statute of the Public Employee (EBEP) establishes that "Public Administrations, entities and bodies referred to in article 2 of this Statute will select their official and labor personnel through procedures that guarantee the constitutional principles previously expressed, as well as those established continuation: a) publicity of the calls and their bases. b) transparency,..."; while its article 61.1 EBEP recalls that the selection processes will have open nature and will guarantee free attendance, without prejudice to the promotion and the positive discrimination measures provided for in this Statute.

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For its part, article 78 of the same legal text determines that "The Public Administrations will provide the jobs through procedures based on the principles of equality, merit, ability and publicity" and in accordance with the article 62 the status of official is acquired, among other assumptions, by the

“overcome the selection process”.

Regarding people with disabilities, article 59.1 provides that: “In the Public employment offers will reserve a quota of no less than seven percent of the vacancies to be covered among people with disabilities, considering as such as those defined in section 2 of article 1 of Law 51/2003, of 2/12, of equal opportunities, non-discrimination and universal accessibility of people with disabilities, provided that they pass the selective processes and prove their disability and compatibility with the performance of tasks, so that progressively reach two percent of the total troops in each

Public administration. The reserve of the minimum of seven percent will be made so that at least two percent of the places offered are to be covered by people who prove intellectual disability and the rest of the places offered is for people who prove any other type of disability.”

Obviously, the guarantees required by the processing of personal data are not may serve to obscure or nullify these general requirements that oblige processes are conducted in compliance with minimum requirements of transparency and advertising. The principle of transparency would affect those interested in the call, without it being necessary once the deadline for submitting requests has expired.

Anyone can access the personal data of the participants. Question different is that the publication if it is carried out with the new modality of the LOPDDG it does not allow full identification, as full name and full tax identification number are not published. Nope However, the transparency of the process is predictable in principle and as a basis for the who participate as applicants in it, who in their capacity as interested parties they can even access the information of other petitioners in their case, if produces some kind of contestation of the valuations.

These Infractions are referred to in article 83.5 of the RGPD, which indicates:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;”

Article 83.7 of the RGPD indicates:

Without prejudice to the corrective powers of the control authorities under of Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.

In this sense, article 77. 2 of the LOPGDD, indicates: "When the

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Those responsible or in charge listed in section 1 committed any of the offenses referred to in articles 72 to 74 of this organic law, the competent data protection authority will issue a resolution sanctioning them with a warning. The resolution will also establish the measures to be taken to stop the conduct or correct the effects of the offense that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the that depends hierarchically, where appropriate, and to those affected who had the condition

of interested, in his case.”

Article 58.2 of the RGPD indicates: "Each control authority will have

all of the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;

d) order the person in charge or in charge of the treatment that the operations

treatment comply with the provisions of this Regulation, when

appropriate, in a certain way and within a specified period”.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been accredited, it is not imposed

specific measure to the claimed one that has already been sent to the AEBOE in writing so that

enable deindexation, with consideration of the monitoring itself that must be

perform until the aforementioned indexation is recorded.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the GENERAL SECRETARIAT OF INSTITUTIONS

PRISONS, with NIF S2813060G, for a violation of Article 9 of the RGPD,

typified in Article 83.5 of the RGPD, a sanction of warning.

/

SECOND: IMPOSE the GENERAL SECRETARIAT OF INSTITUTIONS

PENITENTIARY, with NIF S2813060G, for an infraction of article 5 1.c) of the

RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

THIRD: NOTIFY this resolution to the GENERAL SECRETARIAT OF

PENITENTIARY INSTITUTIONS, and the OMBUDSMAN,

FOURTH: In accordance with the provisions of article 50 of the LOPDPGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

23/23

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. You must also transfer to the Agency the documentation that proves the effective filing of the Sponsored links. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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