 Procedure No.: PS/00009/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 07/27/2018

before the AEPD against the MURCIAN HEALTH SERVICE (MINISTRY OF HEALTH) with

NIF Q8050008E (hereinafter, the claimed). The grounds on which the claim is based are that

has published an agreement of lists of admitted/not admitted within a selective process

in the Murcian Health Service (SMS) of the Autonomous Community of the Region of Murcia

(CARM) in various categories such as Caretaker/Subordinate, Administrative Assistant, in access

universal, containing the full name and surname data together with professional category and

"disability" if that was the shift he chose.

SECOND: In view of the facts denounced in the claim, it was transferred to the

requested to report:

“Clear specification of the causes that have motivated the incidence that has given rise to

1.

the claim.

two.

to avoid the occurrence of new incidents such as the one exposed.

3.

formed about the course and outcome of this claim.”

Detail of the measures adopted by the person in charge to solve the incident and

Documentation proving that the claimant's right to be informed has been met.

The claimant was informed of the referral of the request for information.

The respondent receives the shipment on 10/2/2018, without responding, reiterating the request electronically on 11/6/2018, resulting in: "automatic rejection" after ten days without accessing its content.

THIRD: On 06/13/2019, the director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE against the MURCIANO HEALTH SERVICE (MINISTRY OF HEALTH), for the alleged infringement of article 5.1.c) of the RGPD, of in accordance with article 83.5 a) of the RGPD.”

No claims were received.

FOURTH: On 01/09/2020, the test practice period begins, giving reproduced for evidentiary purposes the filed claim and its documentation, the documents obtained and generated by the Inspection Services, in addition:

1. You access the website of the Murcian Health Service,

-***WEB.1, appreciating that there are various sections capable of hosting listings with data, related to job vacancies, oppositions, etc.

-Access to job bank, "Non-specialist health graduates, ATS/DUE-ordinary call-published listings”, address ***URL.1, containing the literal “In This resolution has resolved the applications submitted within a period of two months opened by the Resolution of June 23, 2014 (BORM 10.7.2014), and which ended on June 10, September 2014, by applicants admitted to the 2013 call for exchanges ordinary. The term to appeal is one month, and ends on March 2, 2015”. I know

contains:

 Text of the resolution, signed by the Managing Director of the Murcian Health Service on 01/21/2015, approving the final list of applicants listed as admi-

tions in the different labor exchanges of the aforementioned body regarding the deadlines for presentation of applications that ended on 07/31 and 10/31/2013, and have accredited their condition of person with disabilities in accordance with the provisions of the resolution of the same organ of 06/23/2014,

 Annex I. Definitive list of applicants who have proven their status as persons disabled. The full DNI and name and surnames are contained in 35 pages, pdf type, sorted or classified by job categories, groups or trades

They are incorporated into the procedure with the name, work bag 35 pages, page 1 and page 2

-In the same sense, they appear up to the call for 2005. Click on 2005 and data appears of name and surnames and complete DNIS, there is no data on the disabled, figure Bolsa de Caretaker / Subordinate (Ordinary call) Definitive list of admitted and excluded to 10/31/2005, url ***URL.2, is saved to the file with the name listed 2005 404 folios. It same for the years 2006, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17 and 18. As an example, also in “Personal services-caretaker-subordinate, ordinary stock market call in force as of 10/31/2016”, address ***URL.3.There is a section listing data for definitive admissions disabled, appearing in the list the S in the letter D, appearing 12 pages in ***URL.4, kept in file as 2016 12 pages.

-There is also a list with 3 pages with data of people with their full ID and name and surnames within the disabled shift, is incorporated as a list 2015, ***URL.5, Bag: NURSING Call: ORD-OCTOBER 31, 2015, kept on file with name : nursing bag 2015.

-In ***URL.6, listing A.T.S. / D.U.E. (Ordinary call) Definitive list of score as of 10/31/2018 of seven pages, with incomplete DNI, full name and surnames and

a cross in the DIS section in all of them, which could be from the condition of disabled and

score, identified: as listed 2018.

-In ***URL.7, identified as 2017 listing, the same as in the previous point, 6 pages

saved as “listing 2017”.

***URL.8 -Adminitrativo_Libre.pdf, TESTS

-In the OPPOSITIONS section,

SELECTIVE TO COVER 18 PLACES OF THE SPECIALIST TECHNICIAN CATEGORY

NON-SANITARY/ADMINISTRATIVE OPTION FREE ACCESS TIME - OFFER 2017-

2018 and PEET PROVISIONAL LIST OF ADMITTED, Resolution of 7/11/2019) identified

as advo 2019

, 64 pdf pages containing incomplete DNI, name and surnames and in some

disability quota

.

the literal

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two)

To the claimant who provides the denominations of the selective processes or bags of

work that your claim is about, the dates and specific categories of the calls

of the selective process or the links in which your data was contained, and the web page in which it appears.

They were also listed to verify if they continue to appear.

No response received.

FOURTH: On 01/27/2020, a resolution proposal was formulated, which was notified on

01/28/2020, from the literal:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with

WARNING to the MURCIAN HEALTH SERVICE (MINISTRY OF HEALTH), with NIF

Q8050008E, for an infringement of Article 5.1.c) of the RGPD, in accordance with article 83.5 a) of the

GDPR.

You must report the measures adopted to comply with the provisions of this

proposal."

On 02/12/2020, allegations were received indicating:

1)

State the reasons for publishing the disability data next to the name,

surnames and complete DNI (one of the reasons for this file), can and should be known

by third parties. In his opinion, the principles of publicity and transparency derived from the

Spanish Constitution, article 103 “access to the public function in accordance with principles of

merit and capacity” and Law 55/2003 of 16/12, framework statute of the statutory staff of

health, provide as a general criterion of provision that of publicity in the selection, promotion and

mobility of health services personnel. Its article 30.6 on people with

disability provides the reserve quota. The bases of the calls complete the

regulations that govern the selection process and the knowledge of the score obtained in the

contests-opposition, because if someone presented by said disabled quota obtains a

total score added to the contest phase and opposition phase that does not allow you to obtain a place

for said quota and was superior to that obtained by other applicants of the access system

In general, it will be included in order of score in the general access system.

On the other hand, Law 39/2015 establishes that the acts that are part of a procedure

selective or competitive competition must be published in the medium provided for in the

call and concordant norms.

two)

The AEPD issued report 178/2014 in which, considering the guarantees of

transparency of competitive processes, conflicting interests must be weighed in order to

be able to determine which should prevail, and in this case advertising should prevail and

transparency of the competitive process on the right to data protection. There is also

a public interest that underlies the guiding principles of access and provision of positions

of work that makes prevail the constitutional relevance that justifies the limitation on

the right. Participants must exercise the option of participating in one turn or another and from

At that time, the conditions for participation in the selection process are established. To the

having reserved a certain number of seats for the disabled, we are dealing with a single

selective process and the rest of the participants will have the right to know who accesses the

shift of people with disabilities and, where appropriate, to assert their rights, since those places

they are accumulated to the free turn if they are empty. It indicates that the applicants attend the

active advertising principle.

3)

They add that it is difficult to assign a reserved scope with, for example, key and password

publication of lists of those admitted and excluded from public employment offers, taking into account

account that a very large number of applicants are contained, such as in the

last call in which some 98 thousand interested parties participated. There are no other measures

less burdensome that may be equally suitable for achieving the intended purpose.

4) They state that they have withdrawn the lists that appeared exposed whose purpose was

fulfilled, those of the years 2005 to 2008.

Regarding the reference to the call for the Job Offer of 2014, 15 and 16, the following is followed:

process of processing since the places coming from those years were summoned to the

throughout 2017,18 and there are processes that have not been completed to date. That's the reason why

that the DNIs are fully exposed, as they are prior to the new LOPDDGG.

In the 2019 calls, no acts of processing are published with double data: DNI

full/name and surnames, indicates a link in which it is credited.

In the lists of labor exchanges, those prior to the call for

2018, they add a link as an accreditation method.

5)

Decree 293/2019 of 5/12 has been published on the obligation to relate to

through electronic means to participants in selective processes BORM 12/12/2019, which

will affect electronic notifications.

6)

It indicates in its discharge that coinciding with the time prior to the entry into force of

said LOPDGDD, the State Tax Administration Agency also published lists of

public employment offers in which lists of applicants are published

admitted and excluded to the selective process convened, whose participants converged on the quota

special disability to which name and surnames are associated, DNI. Provide documents 8

to 10. In the copy, you can see the published resolution of AEAT admitted with DNI

full name, name and surname, all of them from the disabled quota.

7)

In conclusion, it ends by indicating that the claimant's data was exposed with the

content revealed when neither the LOPDGDD nor the Decree

293/2019 of 5/12, so no infringement can be seen.

SEVENTH: The report of the Legal Office 178/2014 is incorporated, with the literal:

“The consultation raises various questions related to the interaction between the

provided in the Organic Law 15/1999, of December 13, on the Protection of data of Ca-

Personal nature, and its Development Regulations, approved by Royal Decree 1720/2007, of

December 21, and Law 19/2013, of December 9, on transparency, access to information

public education and good governance.

In the first place, with regard to the regulatory norms of the active publicity of the Ad-

Public administrations, the consultant raises the way in which the information should

become public, referring to whether such advertising should be carried out through “boards”

tions of advertisements and openly on the Internet”.

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At this point, article 5.4 of Law 19/2013, in its first paragraph, clearly states

that “information subject to transparency obligations will be published in the corresponding

corresponding electronic offices or web pages and in a clear, structured and understandable manner.

accessible to those interested and, preferably, in reusable formats. Will be established

adequate mechanisms to facilitate accessibility, interoperability, quality and

reuse of published information as well as its identification and location”. Add the

article 5.5 that “all information will be understandable, easily accessible and free of charge and will be

available to persons with disabilities in a modality provided by means

or in suitable formats so that they are accessible and understandable, in accordance with the

principle of universal accessibility and design for all”.

In this way, Law 19/2013 not only legitimizes the transfer of data derived from the application

tion of the principles of active publicity, in connection with article 11.2 a) of the Or-

Organic Law 15/1999, but also establishes the criteria that should govern this advertising
which will be essentially electronic and aimed at achieving maximum dissemination
of the information.

That said, the query refers in particular to the case of active advertising related
with the granting of public subsidies, taking into account that article 8.1 c) of
Law 19/2013 orders the publication of the “information related to acts of administrative management”.
with economic or budgetary repercussions”, among which will be found
“Public aid subsidies granted with an indication of their amount, objective or fi-
purpose and beneficiaries. In particular, it is considered whether the publication of the data
of the beneficiaries in the case of aid to people with disabilities, even if it is without
Specify the type of disability in question.

In relation to this point, it is relevant to indicate that article 4.1 of the Organic Law
15/1999 provides that “personal data may only be collected for processing
treatment, as well as subjecting them to said treatment, when they are adequate, pertinent and
not excessive in relation to the scope and the specific, explicit and legitimate purposes
but for those that have been obtained”. Thus, the application of this principle to the
Law 19/2013 must be interpreted in the sense that the publication must find
be subject to adequate compliance with this rule of proportionality.

Law 19/2013 itself pronounces in this sense, when determining in its article 5.3
that “the limits to the right of access to public information will apply, where applicable.
provided for in article 14 and, especially, that derived from the protection of personal data
personal, regulated in article 15”, expressly stating that “in this regard, when the
information contained specially protected data, advertising will only be carried out
prior dissociation of the same.

Well, as is known, the data related to people's health appear re-
included among the categories of specially protected data contained in article 7 of

Organic Law 15/1999, specifically in its third section, which limits the assumptions of

transfer of the data to those cases in which there is the express consent of the inte-

resado or the transfer is protected by a regulation with the force of Law.

In turn, article 5.1 of the Regulations for the development of Organic Law 15/1999 defines in its

section g) data related to health, indicating that they have such a nature “information

mations concerning the past, present and future health, physical or mental, of an individual.

duo. In particular, data related to people's health are considered to be those referring to

based on their percentage of disability and their genetic information”.

In this way, being the data of disability unequivocally a particularly

protected related to health, there is no doubt that the regulation will apply to it.

specific rule contained in the last paragraph of article 5.3 of Law 19/2013, so in

the case raised in the query should proceed to the dissociation of the character data

information related to the grants awarded, in a way that was not identifiable.

cable the beneficiary. It should be emphasized at this point that the character of especially pro-

protected is not predicable of the type of disability, but of the mere existence of the same,

which expressly affects this dissociation obligation in any case.

Next, the query raises various cases in which the opinion is requested.

ion of this Agency in relation to access to certain data contained in experiences

administrative teeth no longer on the basis of the principle of active publicity but on the

of the right of access to public information.

II

In these cases, since none of them seem to include specially protected data,
The provisions of article 15.3 of Law 19/2013 should be taken into consideration, according to
which “when the requested information does not contain specially protected data, the
The body to which the request is addressed will grant access prior weighting sufficiently
of the public interest in the disclosure of information and the rights of those affected
States whose data appear in the information requested, in particular their right to
protection of personal data”. Regarding the weighting criteria
tion, the precept establishes as such "the least damage to those affected derived from the
over the periods established in article 57 of Law 16/1985, of June 25,
of the Spanish Historical Heritage”, “the justification by the applicants of their request in the
exercise of a right or the fact that they have the status of researchers and motivate
access for historical, scientific or statistical purposes”, “the slightest prejudice to the rights
of those affected in the event that the documents only contain data of a character
ter merely identifying them” and “the greatest guarantee of the rights of those affected
ted in case the data contained in the document may affect your privacy
or their safety, or refer to minors”.
Since, in principle, none of the cases raised can be resolved in the light of
of the criteria cited by Law 19/2013 should consider whether they would exist in the cases
raised other criteria to be taken into consideration to determine the origin or im-
origin of the granting of access, being so that said weighting criteria
they could even bring their case from other laws.
Well, in relation to the assumptions raised, it should be noted that in relation to several
this Agency has already ruled on them, even prior to the approval of the
Law 19/2013 on the admissibility or inadmissibility of proposed transfers, with
in accordance with the criteria contained in Organic Law 15/1999, and may also consider
These applicable criteria must be considered in light of the provisions of the new Law.

III

Thus, in relation to competitive bidding processes, and even though it is not similar to the

assumption now raised, the doctrine of the National High Court could be taken into account

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in relation to the transfer of data of the qualifications granted within the framework of

selective, in which the court has considered that the principle of publicity and transparency

ence becomes essential, as a guarantor of the principle of equality. Thus, the hearing

Nacional has weighed the principle of advertising with the protection of personal data

staff, reaching the conclusion that during the processing of the selective process it must be

prevail the first in the judgment of April 26, 2012 of the First Section of the

Administrative Litigation Chamber of the National High Court, which in turn cites the relapse

in resource 215/2010, stated the following:

“Therefore, one of the exceptions to the requirement of consent for the treatment

of data is that of the collision with general interests or with other rights of higher value

that make data protection decline due to the preference that should be granted to that

other interest.

In the present case, since it is a competitive bidding procedure, we must

attend to what is stated in article 103 of the Constitution when it states that the Administration

Public administration objectively serves the general interests and acts in accordance with the principles

principles of effectiveness, hierarchy, decentralization, deconcentration, and coordination, subjecting

full compliance with the Law and the Right. (paragraph 1) and when it states in paragraph 3 that "The Law

will regulate the status of public officials, access to the public function in accordance

with the principles of merit and capacity..." (all in relation to the provisions of article

ass 23 C.E. which we will refer to later.

Obviously, the guarantees required by the processing of personal data cannot serve

to tarnish or annul these general requirements that force processes to be con-

They are carried out by complying with minimum requirements of transparency and publicity. The superior-

of these other values advises that in this case it be understood that the

consent of the interested party for the treatment of the data of the note consisting of its co-

ammunition by the union now recurring.

From this point of view, we must conclude that the consent of those

The people who participate in a competitive concurrence procedure for the treatment

qualifications obtained in said procedure and this as a guarantee and requirement

agency of the other participants to ensure the cleanliness and impartiality of the procedure.

lie in which they attend. (...) It is true that Organic Law 15/1999 does not expressly include

mind exemptions or exceptions to the personal data processing regime in it

contained based on the guarantees of transparency of competitive processes

Therefore, it will be necessary to weigh the conflicting interests in order to determine which of the

they must prevail. Once said weighing has been made, and assessing the circumstances that

concur here, it is clear to this Court that the guarantee must prevail in this case.

publicity and transparency of the competitive process on the right to protection of

data."

Applying this doctrine to the assumption raised, related to access by a student

to the academic record of another, in order to know their qualifications in relation to the

degrees of honor granted, it would be necessary to know if, in light of Law 30/1992, the

bidder can be qualified as interested; that is, if the content of the aforementioned experience

tooth, a certain benefit or loss can be deducted in its favor, which will depend

of the circumstances related to the specific assumption or the deductions that

university fees must be paid in case of having obtained the qualifications planned

teased. In any case, access should be made to the data with respect to which it can

predicate the aforementioned condition of interested party; that is, with respect to which the applicant is

is in a situation of competitive concurrence with respect to the affected party to whom

refer the data. “

The rest of the points, IV on access to data related to productivity of

colleagues, I V access to voter data in an electoral process, VI access of parents

to data from academic records, because it was not related to the matter, it was not mentioned.

nan.

However, the foundation of law second to fourth is reproduced in its entirety.

of the aforementioned judgment of 04/26/2012 appeal 225/2010:

“SECOND: This room has ruled in appeal 215/2010 in relation to

these facts on the occasion of the sanction imposed on the union that supposedly

leaked the information regarding the result of the opposition and in relation to which the

Agency considered that an infringement had been committed regarding the treatment of

data without consent.

The court understood in said sentence that we were facing an alleged

in which consent was not required for the processing of data

based on the following reasoning:

<<Therefore, one of the exceptions to the requirement of consent to

the treatment of data is that of the collision with general interests or with other

rights of superior value that make data protection decline due to the

preference to be accorded to that other interest.

In the present case, since it is a concurrence procedure

competitive we must attend to what is stated in article 103 of the Constitution

when he affirms that the Public Administration objectively serves the interests

and acts in accordance with the principles of efficacy, hierarchy,

decentralization, deconcentration and coordination, with full submission to the

Law and the Right. (paragraph 1) and when it states in paragraph 3 that “The Law will regulate

the status of public officials, access to the public function in accordance

with the principles of merit and capacity …” (all in relation to what was foreseen

in article 23 C.E. which we will refer to later)

Obviously, the guarantees required by the processing of personal data are not

may serve to obscure or annul these general requirements that require that

processes are conducted in compliance with minimum transparency requirements

and advertising. The superiority of these other values advises that in this case

understand that the consent of the interested party was not required for the treatment

of the data of the note consisting of its communication by the union now

recurrent.

From this point of view, we must conclude that the

consent of those who participate in a procedure of

competitive concurrence for the treatment of qualifications obtained in

said procedure and this as a guarantee and requirement of the other participants

to ensure the cleanliness and impartiality of the procedure in which they attend.

(…)

It is true that Organic Law 15/1999 does not expressly include exemptions or

exceptions to the personal data processing regime contained therein with

based on the guarantees of transparency of the competitive processes for which

that it will be necessary to weigh the conflicting interests in order to determine which of

they must prevail. Once said weighing has been made, and assessing the circumstances

that concur here, it is clear to this Court that it must prevail in this case

the guarantee of publicity and transparency of the competitive process on the right

to data protection. (It is not uncommon for this Chamber to conduct such

of weights or valuations; just refer to the judgment of the appeal

331/205; DF 2/2010 or 862/2009).

Therefore, the estimation of the appeal and the annulment of the

resolution appealed on the basis of the prevalence of the general interest taking

in consideration that, as is natural, said use will only be protected within the

purposes related to the same competitive bidding procedure in application

of the limits indicated in article 4 of the LOPD (...)>>

If the data processing in question (the one carried out by the Syndicate when allowing the

publicity of the qualifications of one of the exercises of the selective process)

considered in accordance with the requirements of the LOPD, it is evident that

Compliance with security measures may be required in relation to data whose

disclosure has been declared legitimate because it is not linked to the guarantees

of personal data protection.

The priority of rights mentioned in the legal reasoning

of the sentence issued in appeal 215/2010 obliges us to understand that they are not

The security measures that the appealed resolution intends to apply and that

would have prevented the disclosure that, already in that sentence, it was affirmed that it was not

contrary to the LOPD.

THIRD: In the present case, the Agency considers that BOARD OF

EXTREMADURA has infringed the provisions of article 44.3.h) of the LOPD that

It is considered a serious infraction to keep the files that contain data of a

personnel without the proper security conditions that by regulation are

determine.

We must share the criteria set forth by the appellant entity: the

disclosure produced have no relation to the custody of the files

relating to the opposition in question; it is simply that some

person associated with a particular union has taken notes while

the deliberation of the corresponding body took place and has proceeded to give

publicity to these notes in a way completely alien to the selection body and to

the public administration convening the tests in question.

As we have already pointed out, if in the judgment cited above (appeal

215/2010) we reached the conclusion of the prevalence of the general interest

(publicity and transparency in the selection processes) on the right to

Data Protection; that same argument should be useful to understand that

there has been any infringement due to the fact that the

qualifications since the implementation of security measures would not be required

to prevent such disclosure that we have deemed consistent with the

legal system.

FOURTH: The infraction imputed to the appellant is related to the omission
security measures; This Court has ruled on several occasions
understanding that it is an infraction of result and that it is not enough, then,
with the adoption of any measure, since they must be those necessary to
guarantee those objectives set forth in the regulations specify the precept. And by
Of course, the formal approval of security measures is not enough, since
it is required that they be established and put into practice in a
effective for this reason (Rec. 352/2009) it is useless to approve some
detailed instructions on how to proceed if these are not carried out afterwards
into practice effectively.

This Chamber has pointed out in multiple judgments (such as those cited in the resolution
of the Agency), among others, on June 28, 2006, that the obligation to implement
security measures are not fulfilled with the adoption of any measure, since
must be those necessary to guarantee those objectives set by the
provision, specifically includes "There is imposed, therefore, an obligation to
result, consisting in adopting the necessary measures to prevent
the data is lost, misplaced or ends up in the hands of third parties. Ultimately and
As stated by the State Attorney in the answer, the appellant is, therefore,
legal provision, a data security debtor, and therefore must
give an adequate and reasonable explanation of how the data has ended up in a
place where they are susceptible to recovery by third parties, being
insufficient to prove that it adopts a series of measures, since it is also
responsible for ensuring that they are complied with and executed rigorously. Definitely
Any person responsible for a file (or in charge of processing) must ensure that

that said measures or mechanisms are implemented effectively in the

practice without, under any circumstances, bank details or any other data of

personal character may reach the hands of third parties."

This result requirement should not be interpreted in a maximalist way (such as

as the contested resolution intends) but adapted to the reality of each

case and the specific circumstances detailed in the account of facts incorporated

to this sentence allows us to affirm, as was done in the sentence

corresponding to appeal 82/209 that the very active conduct of that

person from the union who effected the disclosure, made the barriers ineffective

of security implanted by appellant and justifies that the

sanction against which it is appealed and this because it has not been proven that there was

omission of measures to prevent disclosure of participant data

in the selection process.

In the opinion of this court, the opinion of the State Attorney cannot be shared

that it considers that it was the responsibility of the convening Autonomous Community

prevent data from being taken, and this is because it is clear that greater transparency,

the one referred to by the State Attorney himself in his answer, would make inadmissible

limitations such as the one intended as long as they do not appear thus protected

in the literal terms of the call.

Finally, it should be taken into consideration that the confirmation of the criterion

exposed by the resolution subject to appeal would make the Board responsible for

Extremadura of the personal conduct of a member or representative of the

union that was responsible for the disclosure produced."

PROVEN FACTS

1)

The claimant claims against the MURCIAN HEALTH SERVICE (MINISTRY OF HEALTH) because it has published an agreement of lists of admitted/not admitted within a selective process in the Murcian Health Service (SMS) in various categories such as Caretaker/Subordinate, Administrative Assistant publishing in universal access, revealing the full name and surname data and "disability" if that was the shift you chose. Nope He specified which procedure he was referring to.

2) During the testing practice period, the website of the Murcian Health Service was accessed, www.murciasalud.es, including various sections likely to host lists with data of a personal nature, related to the job market and oppositions.

-Accessed on 01/09/2020 to the job bank: "Non-specialist health graduates, ATS/DUE-ordinary call-published listings", address ***URL.1, containing In ***URL.1, Annex I. Definitive list of applicants who have proven their status of a person with a disability. The full ID and name and surnames are contained in 35 pages, pdf type, sorted or classified by job categories, groups or trades They are incorporated into the procedure with the name, work bag 35 pages, page 1 and page 2 who is the one with the personal data

-In the same sense, they appear up to the call for 2005. Click on 2005 and data appears of name and surnames and complete DNIS, there is no data on the disabled, figure Bolsa de Caretaker / Subordinate (Ordinary call) Definitive list of admitted and excluded to 10/31/2005, url ***URL.2, is saved to the file with the name listed 2005 404 folios. It same for the years 2006, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17 and 18. As an example, also in "Personal services-caretaker-subordinate, ordinary stock market call in force as of 10/31/2016,

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disabled, appearing in the list the S in the letter D, appearing 12 pages in ***URL.4,

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SELECTIVE TO COVER 18 PLACES OF THE SPECIALIST TECHNICIAN CATEGORY

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2018 and PEET PROVISIONAL LIST OF ADMITTED, Resolution of 7/11/2019 identified

as advo 2019

, 64 pdf pages containing incomplete DNI, name and surnames and in some

the literal "

disability quota.”

In pleadings to the proposal, the respondent states that it has excluded from the internet the lists of processes that have finished, and that have approved a regulation that regulates the electronic relationship in the selection processes of the participants, which will affect the publication of lists of processes.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

Referring to the following data that were contemplated in proven facts:

1)

In ***URL.1, Annex I. Definitive list of applicants who have accredited their condition of a person with a disability. The full ID and name and surnames are contained in 35 folios, pdf type, ordered or classified by job categories, groups or trades

They are incorporated into the procedure with the name, labor exchange

35 pages

, page 1 and page 2,

who is the one with the personal data

ANNEX I (Res 01/21/2015) FINAL LISTS OF APPLICANTS ADMITTED IN DIFFERENT ORDINARY JOB BANK OF THE MURCIAN HEALTH SERVICE WHO HAVE PROVEN THEIR STATUS OF PERSON WITH DISABILITY WITHIN OF THE PERIOD OPEN BY RESOLUTION OF JUNE 23, 2014. They do not appear scores for each participant.

two)

List with 3 pages with data of people with their full ID and name and

surnames within the disabled shift, is incorporated as a list 2015, ***URL.5, Bag:

NURSING Call: ORD-OCTOBER 31, 2015, kept on file with

name : nursing bag 2015

. Total points and order number appear in the list

3)

In ***URL.6, listing Stock Exchange of A.T.S. / D.U.E. (Ordinary call) List

final score as of 10/31/2018 of 7 pages, with incomplete DNI, name and surname

complete and a cross in the DIS section in all of them, which could be from the condition of

handicapped and score, identified: as listed 2018.

4)

in the OPPOSITIONS section, ***URL.8, SELECTIVE TESTS FOR

COVER 18 PLACES IN THE CATEGORY OF SPECIALIST TECHNICIAN NO

SANITARY/ADMINISTRATIVE OPTION FREE ACCESS SHIFT - OFFER 2017-2018 and

PEET PROVISIONAL LIST OF ADMITTED, Resolution of 11/7/2019 identified as

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/26

advo 2019

verbatim "

, 64 pdf pages containing incomplete DNI, name and surnames and in some the

disability quota.” Scores do not appear

The facts consisting of the exhibition and publication of all the joint data,

DNI, name and surnames, and disability data, or name and surname data and

disabled in lists of "provisional admitted", understanding this as a process already completed

and surpassed by the definitive list, or in employment exchanges of 2015 on the website of the claimed,

with access for any person suppose a violation of article 5.1.c) of the RGPD that

has:

“Personal data will be:

b) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are

processed (“data minimization”);

This principle is not new, since the LOPD contained similar wording

pointing out:

Article 4.1: “Personal data may only be collected for

treatment, as well as subjecting them to said treatment, when they are adequate, pertinent and

not excessive in relation to the scope and the specific, explicit and legitimate purposes

for which they have been obtained.”

In selection procedures, the principles of publicity and transparency are

essential. The norm refers to advertising on procedures and development of exercises.

Publicity means, in the first place, that of the call, which is published in the

BOE, Official Gazette or corresponding electronic headquarters, for general knowledge and access

public to its content and bases.

Regarding the object of the matter itself denounced, once the

call and received the applications for participation in it, the process of

competitive concurrence, which as the word says, must be predicated of and for all

members of the group who aspire to pass the tests convened, who compete on merits

and in capacity against each other. In the development of this process, any participant could

access data related to the process in order, for example, to challenge any

appearance.

The call and the bases do not reflect in detail the specific content of the

that is going to be exposed on the web in terms of the lists of admitted, excluded, etc., if it is going to be only the NIF, this with the name and surnames etc., or if the publication will be produced only for the affected, since it only indicates that it will be published. In this sense, first of all, the Data processing must be carried out if there is no other possible way, if the purpose cannot be obtain by other means, secondly, it is necessary to assess whether said treatment needs to be known by third parties not participating in the process or that knowledge is not necessary for people who are not interested in the process. In addition, it must be taken into account that it is in all cases of admitted lists, with or without points, or provisional lists.

In at least two of the cases, it also concurs that they are data that supposedly have already been fulfilled its purpose, so the suppression of the same so that they should not be visualized should have been fulfilled long ago.

The basic principle with the new RGPD also indicates that when processing the data, always opt for the minimum data necessary to achieve your goal, and for the group of affected.

Bearing in mind that once the announcement and the bases have been published, the procedures following are going to affect a specific, determined and qualified circle that are the applicants, being acts of management, the exposure of data within and for the members of said circle would be adequate, proportionate and consistent with its purpose, but it becomes disproportionate, not adequate for the purpose, when said data, which must not be forgotten are the name and surnames, complete ID and the adjective disabled are visible to everyone, since it is not necessary for the purpose of publicity and transparency of the

participants that non-participants know about them.

Although the data is obtained in accordance with the provisions of the call, for the

management of the process, among which the principle of transparency and the right

for its participants of access to the alleged merits, it must be assessed that the call

Although it does not indicate the form and manner in which the data was published, they would in any case have

affect only the participants in the process and publish, exceptionally in open, the

less possible and necessary data.

. In this sense, not because the call establishes the publication on boards or web,

any extension of data exposure and under any access conditions is authorized

widespread. In addition, the expectations of the participants in the process is to trust the

transparency between those who participate, exposing data to non-participating third parties can

breaking reasonable expectations of those who attend

The exposure of the data object of the complaint begins in June 2018 and from that

date during the course of the process there was no news of the accredited date on which the

listings are removed from the web and physical spaces, and the infraction may remain

during that entire period. On the other hand, even if the data presented by the respondent were

prior to the entry into force of the LOPDDGG that introduces a specific regime of

publication of announcements in official newspapers, the truth is that they have remained under the validity

of the principles of the RGPD, which already existed with the LOPD.

In any case, it would be in line with the regulations for the exposure to take place in the

limited scope of those affected, with no interested parties outside that circle. the law does not

expressly provides for the exposure of disability data, full ID and name and surname

in open for any person who is fully identified, being also a data

of health, managing to inform third parties who do not participate in the process, a

sensitive health data in an electronic format that can not only be viewed, but also

keep and save. The exclusive exposure of the disability quota data with the DNI could be

more in line with the purpose in the treatment is admitted, for not directly identifying

to the person in cases of employment exchanges or selective processes, a circumstance that is not

not in any of the 4 lists that appear in the heading of fundamentals of

right i

III

Regarding the ruling of the National High Court alluded to in the report (Sala de lo

Contentious-Administrative, Section 1) of 04/26/2012 dealing with: factual background

first: “On 09/15/2008 a complaint was made by Pablo on the grounds that the

Qualifying Court of the Selective Tests for Social Educators of Group II of

Labor Personnel, published in ORDER 12-22-2006 convened by the Ministry of

Presidency of the Junta de Extremadura has provided the FSP-UGT with personal data with

the notes (of the second exercise) of the opponents (both of the approved ones and of the

suspended). The FSP-UGT uses said data to inform opponents by telephone

about the note obtained, providing it to whoever requests it, just by giving the name of the

person”, reproducing for considering it of interest the second legal basis that

indicates:

The assumption analyzed is different, since it is a question of lists of procedures in order to carry out

test, that it contains excess data, is not fit for purpose, and is ex-

posts on the web open to anyone, being also health data, may-

If it is decided to publish said data, do it with other content and other variants

The commented judgment indicates that "the consent of those

persons who participate in a competitive concurrence procedure for the treatment

of the qualifications obtained in said procedure and this as a guarantee and requirement of the

other participants to ensure the fairness and impartiality of the procedure in which

concur. (...) what is being safeguarded is for a well predefined circle of

participants, those affected by those issues, so not any way to publish the

data as it has happened in this claim can be considered adequate to the principles of the

regulation of the data minimization principle. It is not in the public interest to know the

lists in which there are no scores, but only a list of those admitted, whether provisional or

and if there are scores, the type of data to be exempted must be adapted.

It is observed how the exhibition of the acts is processed as definitive scores or

provisional procedures of the employment exchange of the year 2015, would have fulfilled their

finaliad, so they can be canceled. In addition, excessive data was contained, not

suitable for its purpose from the moment in which the full identity card, name and

surnames and disability data, a circumstance that was already contemplated in the previous LOPD and

in the new RGPD it is specified in the principle of article 5.1.c) of the RGPD that is imputed here.

It should be noted that consent does not play a decisive role in the treatment of

data when it is the public administration, which acts in the management of general interests,

like this selective process management. Furthermore, the GDPR itself highlights

I manifest that the consent of the affected party should not constitute the legal basis of the treatment

in certain cases. Thus, recital 42 states in its last sentence that "The

Consent should not be considered freely given when the interested party does not enjoy

true or free choice or cannot withhold or withdraw consent without prejudice

any" and recital 43 adds that "To ensure that consent has been given

freely, this should not constitute a valid legal basis for data processing

of a personal nature in a specific case in which there is a clear imbalance between the

interested party and the person in charge of the treatment, in particular when said person in charge is a

public authority and it is therefore unlikely that the consent was freely given

in all the circumstances of that particular situation.

This is because the consent notes are hardly going to be given in a re-

in which there is no parity of power, but the powers of the Administration

are higher than those of the administrator, and the consent notes would not be collected.

tion that is defined in article 4 of the RGPD:

«consent of the interested party»: any manifestation of free, specific, informed will

and unequivocal by which the interested party accepts, either by means of a declaration or a clear

affirmative action, the processing of personal data that concerns you;

In this specific case, the consequences of not providing the service are not explained.

consent, especially significant negative consequences for data subjects

The elements of specificity and information that the document must have are not detailed either.

consent because it only indicates that acts will be published, without reference to the data in

in terms of those to be published and their scope, they must not be excessive or not necessary or

disproportionate to the purpose, not the type of query that could be made, if at the level of

participants or in a universal field of access, which in this case has to do with the

interested as far as lists of admitted or excluded are concerned, not of the qualifications

determine what is being analyzed. Thus, the legitimate basis for the treatment of ratings is not

It would be consent.

As for transparency, it has its limits and one of them is that of the data

specially protected, and the disability data is considered as such a health data,

to which the same Law 19/2013 refers, indicating that the limits of the regulations would apply

data protection regarding access to them. In any case, do not lose

view the basic principle, which is that the act with its data, reaches its objective without

distort its nature/purpose, and without implying sacrifices of rights with which

may attend unjustifiably.

Taking into account that said data of people on which it is predicated that they are.

DISABLED, with their FULL NAME AND SURNAME AND FULL DNI is a

extra that not only does not agree with the provisions of the RGPD and the LOPDGDD, nor with the previous

LOPD, it turns out that said treatments would not be in accordance with the principle of quality of the

treatment established in article 4.1, which stated: “Personal data

They can only be collected for treatment, as well as subjecting them to said treatment,

when they are adequate, relevant and not excessive in relation to the scope and

specific, explicit and legitimate purposes for which they were obtained.”, which is

can be understood today in article 5.1.c imputed as: "adequate, pertinent and

limited to what is necessary in relation to the purposes for which they are processed ("minimization of

data");"

Regarding the justification that the data are from a selective process of

competitive concurrence, to which the principle of transparency is applied, and it can be deduced

a conflict with the data protection of its owners, due to the superiority of the principle

constitutional transparency and objectivity, it must be indicated:

-Given the situation and evolution of the technique in which the data is being processed, it could be

infer that the requirement to reproduce all these data at any stage of the process to the

other participants in which they attend to ensure their cleanliness and impartiality, it is not given

only for these, but they are communicated to any person outside the procedure who wants

enter said website or circulate through the space of the advertisements and carry out a complete

tracking of identification, tests and qualifications obtained. If to this is added that each

year the process has been repeated, data could be obtained that is not really

necessary for non-participants in the competition process.

- Although transparency would be desirable for the group of participants in the process, in all

case, especially provisional admissions, also listings should be removed when

have produced their effects, since they are pure formal acts that must not continue to appear by

indefinite time, as happens when listings have been kept since 2005.

-Another possibility is that if it is going to be for the knowledge of any person, in the open,

reduce the data, not putting the complete DNI.

The guarantee of publicity and transparency of the competitive process on the right to

data protection is not achieved by the general publication of all data in

open each process, because in addition, technology can allow only those affected to be

those who at all times can know the identity, with the appropriate and necessary data

for the purpose in question.

If, in addition, someone who is not interested in not participating in the process would like to access some

aspect of the procedure, would be protected by the right of access, prior accreditation of

holding an interest worthy of protection.

The knowledge in each exercise that forms the process, of all the data with the DNI and

the notes of the phases that make up the procedure, to any person, is excessive and

disproportionate, when transparency is related to the participants in the process,

with the process itself and with the result of the final phase. The publication is not being valued

the final results, is the internal process of the development of the exercises, in which they appear

in each and every one of the phases for all the public the complete data of name and

surnames and NIF and disability data.

IV

Since the publication of the grades obtained is lawful, it is necessary to find a way that

minimize the data keeping proportionality and adapting to the purpose in accordance with the

indicated. One could think of an electronic access of the participants, or a virtual space

only accessible to them, not with access to all the data but to the necessary ones. It must, on the other

On the other hand, the principles contained in article 5 of the RGPD must be respected in any case, especially

those of limitation of the purpose, minimization of data, limitation of the term of conservation,

integrity and confidentiality, making the publication in a way that supposes the least

interference in the rights and freedoms of the interested parties, which excludes the possibility of a

widespread knowledge of the qualifications of people, and especially of people

disabled. In this sense, as has been indicated, for definitive qualifications or acts

process, if it is decided to publish them, some system that does not identify at first could be useful

fully to the person and that serves the rest of the participants, to know their basic data,

as it could be part of the NIF with name and surnames.

Regarding the exhibition on the notice boards of the center, with the content

limited, can be done as long as they are not in common areas of the centers,

that it is guaranteed that access to them is restricted to said persons and that

the necessary measures to avoid its public knowledge by those who lack interest in

the same. This exhibition tends to be replaced by the electronic bulletin board.

v

Although the obligation to comply with the principle of data quality through its

proportionality and adequacy was already in force with the LOPD, after the approval of the new

LOPDGDD adds a way to expose the data in publications of acts of concurrence

competitive.

As a reference framework for the use of data, Law 39/2015 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 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 the Public administrations."

article 40.5 Notification:

“Public Administrations may adopt the measures they deem necessary for the protection of personal data contained in resolutions and administrative acts, when they have more than one interested party as addressees.”

Article 45 of the same rule highlights:

"1. The administrative acts will be published when established by the regulations. regulations of each procedure or when advised by reasons of public interest assessed by the competent body.

In any case, the administrative acts will be subject to publication, having the effects of the notification, in the following cases:

b) In the case of acts that are part of a selective procedure or competitive competition of any kind. In this case, the call for the procedure

must indicate the medium where the successive publications will be made, lacking

validity those carried out in different places.

3. The publication of the acts will be carried out in the corresponding official gazette, depending on which

the Administration from which the act to be notified proceeds.

4. Without prejudice to the provisions of article 44, the publication of acts and communications that,

by legal or regulatory provision must be practiced on bulletin boards or edicts, it is

shall be deemed fulfilled by its publication in the corresponding Official Gazette."

Article 46. Indication of notifications and publications

"If the competent body appreciates that the notification through announcements or the

publication of an act harms rights or legitimate interests, it will be limited to publishing in the Newspaper

official that corresponds a brief indication of the content of the act and the place where the

Interested parties may appear, within the term established, for the knowledge of the

full content of the aforementioned act and proof of such knowledge.

Additionally and optionally, the Administrations may establish other

complementary forms of notification through the remaining means of dissemination that are not

shall exclude the obligation to publish in the corresponding Official Gazette."

Law 39/2015 also regulates in its preamble access to communications to

affected through the electronic General Access Point of the Administration, indicating:

"A special mention should be made of the innovations introduced in terms of

electronic notifications, which will be preferred and will be made in the electronic office or in the

unique enabled electronic address, as appropriate. Also, it increases the

legal certainty of the interested parties, establishing new measures that guarantee the knowledge of the provision of notifications such as: sending notices of notification, whenever possible, to electronic devices and/or to the address of email that the interested party has communicated, as well as access to their notifications through the General Electronic Access Point of the Administration that will function as a entrance portal

."

Article 43.4. 4. of the aforementioned law states:

"Those interested will be able to access the notifications from the General Access Point Administration email, which will function as an access portal."

As content of the electronic offices, article 6.2.g) of the Royal Decree 1671/2009, of 6/11, which partially develops Law 11/2007 on electronic access of citizens to public services, indicates:

"two. The electronic offices will have the following services available to users: citizens:

g) Where appropriate, electronic publication of acts and communications that must be published in bulletin board or edicts, indicating the substitute or complementary nature of the electronic publication."

In accordance with the principle of data limitation in the treatment to the merely indispensable, it is possible in the first place, that the publication of each result of the exercises that are being held, it is limited to those affected with, for example, the access through the general electronic access point, or with specific consultations with attribution of keys and passwords that can be generated with the presentation of the application, or through confirmation in email shipments, among other possible ones. of this

In this way, the publication, which concerns those who participate, serves as a notification, really fulfills the function of being intended for the specific person/participant in the process, the only ones interested in

its transparent development. Only the participants could view their data and that of the

other participants for the purpose of the process in which they participate. Access can be

individual, but nothing prevents that for reasons of legal certainty or transparency of the process

if a participant considers it so, you can view the rest of the data of other participants.

Secondly, in the event that it were published on the web in open for any

person, it would not be necessary that in process lists such as provisional lists or

The definitive double identifier of the complete DNI/name and surnames should be included. Additionally, the

data name and surnames and the disability data can by themselves identify the person without

too many difficulties.

Of course, the data that would have been published in the past related to

selective processes already completed, as is the case here, speaking of provisional lists, or

definitive, of processes of 2015, 2016 are not, after several years, necessary, and would violate

the principle of conservation period, of article 5. 1.e) of the RGPD, which was also contained

in article 4.5 of the previous LOPD. The LOPDGDD establishes:

article 32:

"1. The data controller will be obliged to block the data when it is processed.

rectification or deletion.

2. The blocking of the data consists of the identification and reservation of the same, adopting

technical and organizational measures, to prevent its treatment, including its visualization,

except for the provision of data to judges and courts, the Public Prosecutor or

the competent Public Administrations, in particular the authorities for the protection of

data, for the demand of possible responsibilities derived from the treatment and only for the

their prescription period.

After this period, the data must be destroyed.

3. Blocked data may not be processed for any purpose other than that indicated

in the previous section”

The data minimization design has been embodied in the LOPDGDD, (BOE

6/12/2018) that in its “Seventh additional provision: on Identification of interested parties in

notifications through announcements and publications of administrative acts” indicates:

1. When it is necessary to publish an administrative act that contains data

data of the affected party, it will be identified by its name and surnames, adding

four random numerical figures of the national identity document, identity number

of foreigner, passport or equivalent document. When the publication refers to a

plurality of affected these random figures shall alternate.

When it comes to notification through advertisements, particularly in the cases to

those referred to in article 44 of Law 39/2015, of 1/10, of Administrative Procedure

Common to Public Administrations, the affected party will be identified exclusively by

the complete number of your national identity document, identity number of

foreigner, passport or equivalent document. (The publication case related to

selective processes would be framed in this paragraph, being therefore appropriate the

exhibition of DNI, which is usually necessary in selective processes).

When the affected party lacks any of the documents mentioned in the two

previous paragraphs, the affected party will be identified only by their name and surname. In

In no case should the name and surnames be published together with the number

full version of the national identity document, foreign identity number, 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 secure publication procedures

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

moment in which the governing bodies and the competent public administrations

approve provisions for the application of the aforementioned Seventh Additional Provision. Their

The objective is to try to prevent the adoption of different formulas in application of the aforementioned

provision may give rise to the publication of numerical figures of the documents

identifiers in different positions in each case, allowing the complete recomposition of

these documents.

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

“GUIDANCE FOR THE PROVISIONAL APPLICATION OF THE ADDITIONAL PROVISION

SEVENTH OF THE LOPDGDD”

“In the Spanish Data Protection Agency, the Catalan Data Protection Authority

of Data, the Basque Agency for Data Protection and the Council for Transparency and Protection

of Data of Andalusia, multiple queries have been received on the application of what is established

in the first paragraph of the first section of the seventh additional provision “Identification of

those interested in notifications through announcements and publication of acts

administrative” of the Organic Law 3/2018, of 5/12, of Protection of Personal Data and

guarantee of digital rights.

This circumstance has advised that, in order to facilitate a practical criterion, said

authorities propose guidance for the provisional application of security guarantees

protection of the disclosure of the national identity document, identity number of

foreigner, passport or equivalent document of the interested parties.

To do this, they have randomly selected the group of four numerical figures that are

they will publish for the identification of those interested in the publications of acts

administrative. The procedure for the random determination of the four figures

numerical data to be published of the identification code of an interested party was carried out through the

random selection process in an opaque bag of one ball from 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 that occupy the

fourth, fifth, sixth and seventh positions. In the example: ***4567**.

• Given a NIE with format L1234567X, the digits that 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, the digits will be published

that occupy the positions in the format, avoiding the three alphabetic characters, third,

fourth, fifth and sixth. In the example: *****3456.

• Given another type of ID, as long as that ID contains at least 7 digits

numeric, these digits will be numbered from left to right, avoiding all characters

alphabetic characters, and the procedure of publishing those numeric characters that

occupy the fourth, fifth, sixth and seventh positions.

For example, for an ID like XY12345678AB, the post would be:

*****4567***.

• If that type of identification is other than a passport and has less than 7 numeric digits,

All the characters, including alphabets, will be numbered with the same procedure as above and

Those who occupy the last four positions will be selected. For example, in the case

from an ID like ABCD123XY, the post would be: *****23XY.

• Alphabetic characters, and those numeric characters not selected for publication, are

will be replaced by an asterisk for each position."

Therefore, in addition to introducing the aforementioned measures in general, depending on whether

The publication must affect or not, only a group, if an act has to be published or notified,

and if it is considered that it will affect only a closed group of the collective, it must be taken into account

account in addition to these references, a special diligence for the possible identification or

identifiability through direct or indirect references other than name and

surnames or NIF.

Pretend, as the defendant states, that transparency and

general publicity exposing in open with full identifiability lists of

admitted/excluded, definitive or provisional with disability data throughout all and

each of the successive parts of the process according to the results of parts of the tests or

exercises that are undertaken, at all times and open phase is not admissible.

It is disproportionate and clashes with the principle of data minimization, given the purpose

intended, which is basically to serve as a notification system for those affected who

participate in the procedure, and contribute among them to the transparency in the development of the

training. That access can be produced by any person other than the applicants is

an overexposure of data to third parties that lacks justification and exceeds the purpose

of the data processing of those affected.

Therefore, the rest of the public, those who do not participate in these tests,

they lack a legitimate basis for access to the surname and name data together with the NIF

of each applicant and of each of the results of each test that forms the

selective process, and the data of disabled, for having already elapsed their period of

conservation, and of the processes still in force, for not being considered necessary or convenient

the undifferentiated exposure in the electronic headquarters of the disabled data.

SAW

Regarding the publication of the disabled data together with the name and surnames, it is reiterated

that it is a data referring to health that, if it affects transparency and competition, would only be

those who participate in the selection process.

Regarding disability data, health data, recital 35 of the RGPD indicates:

“Personal data relating to health must include all data relating to

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 on the natural person collected with

occasion of its 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

Advice; any number, symbol or data assigned to a natural person that identifies it

univocally for health purposes; information obtained from tests or examinations of a

part of the body or of a bodily substance, including that derived from genetic data and

biological samples, and any information relating, for example, to a disease,

disability, risk of disease, medical history, clinical treatment

or the physiological or biomedical state of the data subject, regardless of its source, by

example a doctor or other healthcare professional, a hospital, a medical device, or a test

in vitro diagnostics.

To this end, it would be possible to publish the resolution approving the qualifications,

but access being restricted to the participants, or exposing the NIF to third parties, but not together

name and surnames and disabled, being able to display NIF and disabled, ensuring

that said NIF is not related to the name and surnames.

The way of proceeding of the accused should be to modify in the sense exposed in

upcoming actions together with the withdrawal of the data if they are published in open/universal

of the listings that have already fulfilled their function, so that they do not remain for more than a period

adequate and reasonable for the intended purpose, which was in relation to 2018 processes.

The way in which the competitive process has been publicized and transparent,

publishing names and surnames, dnis and disability is excessive for the purpose of the

knowledge of it, as it is accessible by any person and contains identity

complete and disabled, a circumstance that only concerns those admitted/excluded. It

correct in your case could be either published only for those affected, or ID along with

disabled in your case.

On the other hand, in this case there are lists from past years (2015 in which

contemplates said data, with processes already closed, which should be cancelled)

The claimed party must block the listings that contain data from calls already

closed, so that data for years since 2005 cannot be viewed,

having to establish a data retention period

7th

Article 83.7 of the RGPD indicates:

“Without prejudice to the corrective powers of the control authorities under the

Article 58(2), each Member State may lay down rules on whether it can, and

To what extent, impose administrative fines on authorities and public bodies

established in that Member State.

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

of all the following corrective powers indicated below:

a)

sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

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

treatment comply with the provisions of this Regulation, where appropriate, in a

certain manner and within a specified period;

Article 72.1.a) of the LOPDGDD indicates: “Infringements considered very serious

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the following:

The processing of personal data violating the principles and guarantees

a)

established in article 5 of Regulation (EU) 2016/679”.

In this sense, article 77.2 of the LOPGDD, indicates:

2. When those responsible or in charge listed in section 1 commit any

of the infractions referred to in articles 72 to 74 of this organic law, the

competent data protection authority will issue a resolution sanctioning the

themselves with warning. The resolution will also establish the appropriate measures

adopt to stop the behavior or correct the effects of the infraction that had occurred.

task.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which

depends hierarchically, where appropriate, and those affected who had the status of

interested, if any.

3. Without prejudice to what is established in the previous section, the data protection authority

It will also propose the initiation of disciplinary actions when there are indications

enough for it. In this case, the procedure and the sanctions to be applied will be the

established in the legislation on the disciplinary or sanctioning regime resulting from

app.

Likewise, when the infractions are attributable to authorities and managers, and it is proven

the existence of technical reports or recommendations for treatment that would not have

been duly attended to, the resolution in which the sanction is imposed will include a

reprimand with the name of the responsible position and the publication will be ordered in the

Official Gazette of the corresponding State or Autonomous Community.

4. The data protection authority must be notified of 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 analogous institutions of the

autonomous communities the actions carried out and the resolutions issued under the

this article.

6. When the competent authority is the Spanish Agency for Data Protection, this

will publish on its website with due separation the resolutions referring to the

entities of section 1 of this article, with express indication of the identity of the

responsible or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority,

It will be, in terms of the publicity of these resolutions, to what its regulations have

specific."

Therefore, you must certify that the website of the claimed party blocks the view of

the data contained in:

1) In ***URL.1, Annex I. Definitive list of applicants who have accredited their

condition of a person with a disability. The full DNI and name and surnames are contained in

35 pages, pdf type, ordered or classified by job categories, groups or trades

They are incorporated into the procedure with the name, work bag 35 pages, page 1 and page 2

which is the one that has the personal data, containing ANNEX I (Res 01/21/2015) LISTS

DEFINITIVES OF APPLICANTS ADMITTED IN DIFFERENT JOB BANK

ORDINARIES OF THE MURCIAN HEALTH SERVICE THAT HAVE PROVEN THEIR

CONDITION OF PERSON WITH DISABILITY WITHIN THE PERIOD OPEN BY

RESOLUTION OF JUNE 23, 2014.

two)

List with 3 pages with data of people with their full ID and name and surname

Within the disabled shift, it is incorporated as a list 2015, ***URL.5, Bag:

NURSING Call: ORD-OCTOBER 31, 2015, kept on file with

name : nursing bag 2015

. Total points and order number appear in the list

As to:

In ***URL.6, listing Stock Exchange of A.T.S. / D.U.E. (Ordinary call) Definitive list

3)

score as of 10/31/2018 of 7 pages, with incomplete DNI, full name and surnames and

a cross in the DIS section in all of them, which could be from the condition of disabled and

score, identified: as listed 2018.

They must clarify if the data DIS , S is for disability, and they should allow access

exclusively to the participants in the process.

list:

in the

As for the

***URL.8

4)

-Adminitrativo_Libre.pdf, SELECTIVE TESTS TO COVER 18 PLACES OF THE

NON-HEALTH SPECIALIST TECHNICIAN CATEGORY/ADMINISTRATIVE OPTION

FREE ACCESS SHIFT - 2017-2018 OFFER AND PEET PROVISIONAL LIST OF

ADMITTED, Resolution of 11/7/2019 identified as advo 2019

, 64 pdf pages containing

disability quota.” Not listed

DNI not complete, name and surnames and in some the literal "

scores.

OPPOSITIONS section,

This is a "provisional" list, therefore it is understood that there will be a definitive one, not

being that but a process already completed that would affect the participants, so it could be

dispense with it being exposed.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE a sanction of WARNING to the MURCIANO SERVICE OF

SALUD (HEALTH MINISTRY), with NIF Q8050008E, for an infraction of Article 5.1.c)

of the RGPD, in accordance with article 83.5 of the RGPD.

SECOND: As determined in article 58.2.d) the respondent must adopt measures

corrections so that the lists that appear in proven facts, whose purpose was fulfilled or

were of a provisional type, cannot be viewed on its website and so that the data

disability does not remain attached to the DNI and name and surnames. You are requested to notify

within one month the measures adopted for this purpose.

THIRD: NOTIFY this resolution to the MURCIANO HEALTH SERVICE

(HEALTH COUNSELING).

FOURTH

with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the OMBUDSMAN, in accordance

FIFTH: In accordance with the provisions of article 50 of the LOPDGDD, 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

LOPDGDD, 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 Agency

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the Chamber
of the Contentious-administrative of the National High Court, in accordance with the provisions of the
article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13707,
regulation of the Contentious-administrative Jurisdiction, within a period of two months from
from the day following the notification of this act, as provided in article 46.1 of the
aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,
may provisionally suspend the firm resolution in administrative proceedings if the interested party
states its intention to file a contentious-administrative appeal. If this is the case, the
The interested party must formally communicate this fact in writing addressed to the Agency
Spanish Data Protection, presenting it through the Electronic Registry of 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 will also need to transfer
the Agency the documentation that proves the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative within a period of two months from the day following the notification of
this resolution would terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es