Guideline No. 1/2018

Availability of personal data of students, teachers and others

workers on the website of higher education institutions

The widespread use of the Internet by higher education institutions, with

emphasis on the creation of its own sites (websites) has contributed to a

approach and interaction with society, through greater exposure of their

activities, as well as streamlining the relationship with students, teachers and other

workers in higher education institutions.

The use of electronic means in the performance of the teaching and management activity of the

teaching is undeniable today, and it is desirable that such means be used to give

to know decisions and other acts emanating in this context. However, the fast

adhesion to these means

not technological

was generally accompanied by the

establishment of strict criteria that frame the availability of

personal information on the Internet, in order to protect the rights,

namely the right to the protection of personal data and respect for life

toilet.

In view of the widespread practice of making personal data available on the websites of the

Internet of higher education institutions, in some cases in contradiction with the

legal obligations and with compression of the rights, freedoms and guarantees of the holders

of the data, it is relevant to define the terms in which such availability

must be done. This headquarters will focus on the most common situations of availability

of this type of information, referring to the framework of another type of data

for the considerations made in Deliberation No. 1495/2016, of 6

September, concerning the availability of students' personal data on the website

of education and teaching establishments, with the necessary adaptations1.

Considering the delimitation of the object of this guideline, they will not be analyzed here

other processing of personal data that those institutions carry out.

1 The deliberation is accessible at https://www.cnpd.pt/bin/decisoes/Delib/20_1495_2016.pdf.

In addition, it is recalled that there is a wealth of useful information about the activity

of educational institutions that is disseminated on their websites and that do not

involve personal data, that is, they do not involve information relating to a person

unique, identified or identifiable2, which is why it will not be considered here.

In this regard, the National Data Protection Commission (CNPD) underlines the

importance that the pursuit of other interests and principles governing the

activity of higher education institutions, such as the principle of transparency

administrative procedure where public entities are involved, is done

always respecting the principle of minimization of personal data and, in this

measure, if you opt for aggregated or anonymized disclosure, only when it is

strictly necessary moving forward to the solution of making data available

personal.

In the process of preparing this guideline, the CNPD promoted a consultation

public, having sought to consider the different arguments presented, both for

higher education institutions, as well as by citizens, in a total of seven contributions, and

find solutions that protect the various interests expressed, sometimes

antagonistic nature. Only contributions that are not related to

directly with the type of data treatment analyzed here.

Thus, the CNPD sets guidelines for higher education institutions regarding

the legal limits for the processing of personal data, in terms of its dissemination

through the Internet.

2 See the concept of “personal data” in Article 4(1) of Parliament Regulation (EU) 2016/679 European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to regarding the processing of personal data and the free movement of such data and which repeals the Directive 95/46/EC (General Regulation on Data Protection – RGPD).

3

The situations considered here are presented according to the category of holders of data, starting with analyzing the dissemination of student data, in order to then focus on the disclosure of personal data of teachers and other workers.

1. Availability of students' personal data

1.1. Classification guidelines

The dissemination within the educational institution of the classification guidelines of the students is based on a principle of publicity embodied in administrative regulations, which aims to guarantee the transparency and control of the assessment activity, as well as respect for the principles of impartiality, justice and equality among students.

In accordance with the principle of minimization of personal data, enshrined in paragraph c) of paragraph 1 of article 5 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to concerns the processing of personal data and the free movement of such data and that revokes Directive 95/46/EC (General Regulation on Data Protection, hereinafter identified by GDPR), the agendas should only contain the data strictly necessary to fulfill the advertising purpose of the student evaluation, that is, only the name and number of each student with the

corresponding assessment (in principle, quantitative) by subject – in addition to the year school and perhaps the class.

To achieve the purpose of publicizing the ratings, there is no need to introduce additional information on this agenda, such as absences from the student, the existence of possible school social support or other information that, if in the student's individual file or other records, will always be excessive in relation to the objective that the agenda aims to achieve. In fact, such information is not directly with the result of the evaluation, which lacks publicity, before

corresponding, at most, to presuppositions prior to the realization of the evaluation, as with attendance or participation in a minimum number of classes3.

In any case, and still applying the principle of proportionality, the publication of agendas on the Internet should not be made on an open page and accessible to anyone, not only because it substantially expands the range of recipients, going beyond the intended, as well as the impact that its availability on the Internet has on the students' legal sphere. Indeed, given the possibilities offered by the Internet of reproduction and storage of information for an unlimited time, and the fact that ratings constitute sensitive information about students, subject to production of stigmatizing judgments and at the mercy of abusive use by third parties not identified, understands the CNPD to pose a risk to the privacy of students to general availability of assessment guidelines on the Internet, with no legal basis that underlies this generalized diffusion4.

That is why the CNPD established as a guideline for educational establishments to non-publication of student assessment guidelines on accessible Internet sites free5. The guidelines published in the meantime on the Internet must, for the reasons explained and for pursuant to subparagraph c) of paragraph 1 of article 5 of the GDPR, be removed from the Internet, with the

beware of forcing the deletion of cached data in search engines.

It is important to underline that the purpose of making the evaluation result known to the main stakeholder (the specifically assessed student) is fulfilled with the access

3 Note that the provision of this type of information on the agenda in the cases in which it is ensured that only the student to whom the data relates has access.

4 In fact, Law no. 62/2007, of 10 September, which defines the legal regime for educational institutions superior, when, in no. 2 of article 162.º, it imposes the publicity of information of the institutions, it limits it to school achievement and failure rates, which supposes that such publicity is limited to aggregated or statistical information.

5 This guideline is reflected in CNPD Deliberation no. 1495/2016, of 6 September. Although the aforementioned decision is directly addressed to educational and teaching establishments not higher, the content of the conclusions of point 1.1., p. 7-9, is applicable, mutatis mutandis, to higher education establishments.

by the latter to its classification, so the CNPD considers that the systems of information that limit the access of each student to the respective classification are the more in line with the legal imposition of the adoption of technical solutions that ensure, by default, the data strictly necessary for the purpose of your treatment (cf. Article 25(2) of the GDPR). A technological solution that guarantees the each student, in the first line and by default, restricted access to their respective classification does not prejudice the possibility that, in a second moment, it will be possible to access the agenda of a curricular unit to all those who are enrolled in it, taking into account the need to safeguard the evaluation's control objective especially from the perspective of respect for the principles of equality, justice and impartiality underlying the imposition of publicity.

With regard to the practice of posting the guidelines inside the establishments

higher education, it is recognized that, contrary to what happens at other levels of education, those are free or unrestricted entry, and there is no guarantee that only members of the respective academic community have access to it. In this measure, in the light of the principles of proportionality and data minimization enshrined in the GDPR, it seems to be more appropriate to publicize the guidelines in digital format, since it allows the stratification of access to information and reduces the risk of improper or unnecessary access to personal data.

It is also important to note that, in addition to the higher education institution under the described above, no third party may broadcast classification guidelines. In truth, this dissemination implies the processing of personal data of others without glimpse a foundation recognized in GDPR6.

1.2. Disciplinary decisions and other personal information

6 In any case, it is always remembered that the conditions defined here for the dissemination of the classification by higher education institutions do not exclude a student's right directly interested party to request, in general terms, the consultation of an agenda or the issuance of a certificate of the agenda to guarantee the exercise of their rights.

Still in relation to personal data of students, it is important to point out that another information that reveals your financial or patrimonial situation, your consumption or other behaviors, must be specially protected so that the right to respect for private life7 is not affected. Therefore, special care must be taken in not making available on online platforms or in other contexts information regarding to social support, except within the scope of procedures for attributing the same with access profiles restricted to those directly interested in support.

It must also be ensured that decisions taken as part of disciplinary proceedings are not made public or made known to any third parties within the

academic community.

It is recalled that the publication of administrative acts is only mandatory when imposed

by law (cf. 159.º of the Administrative Procedure Code), being certain that Law no.

62/2007, of September 10, which defines the legal regime for educational institutions

superior, does not provide for the publication of decisions to apply disciplinary sanctions

to students. Although the referred law recognizes disciplinary autonomy to the institutions

of higher education, conforms to the regulatory competence relating to the disciplinary power

on students, determining the subsidiary application of the provisions of the law that defines the

Disciplinary statute of Public Administration employees and agents and in the Code

and other applicable labor legislation (cf. subparagraph c) of paragraph 2 of article 75).

However, the regulatory definition of such a regime cannot go against the law, nor go beyond the

options contained in it regarding the restriction of rights, freedoms and

guarantees of citizens (cf. subparagraph b) of paragraph 1 of article 165 and paragraph 5 of article 112 of the

Constitution of the Portuguese Republic).

Having analyzed those legal diplomas, it is concluded that the legal

of sanctioning decisions, as a rule, under the terms of article 223 of the General Law of

Work in Public Functions, approved by Law n.º 35/2014, of 20 June,

last amended by Law No. 73/2017, of 16 August – publication of the decision

7 Enshrined in paragraph 1 of article 26 of the Constitution of the Portuguese Republic, and also protected by the

Article 35(3) thereof, as well as Article 7 of the Charter of Fundamental Rights of the European Union and

in Article 8 of the European Convention on Human Rights.

penalty is only imposed to make up for the impossibility of notifying the offender,

not based, therefore, on an intention to give generalized knowledge of its

application. But even if the law did not expressly say so, the same result

would arrive by weighing the rights and

interests in presence and its

harmonization in the light of the principle of proportionality. And, from the outset, out of consideration

the principle of legal typicality of sanctions, which makes it depend on an express provision

legal application of a measure that has a sanctioning effect.

In fact, the publication or dissemination of a sanctioning decision means giving the

knowing to third parties information related to unlawful conduct and the sanction applied in

concrete, corresponding in practical terms to a second measure of

penalty (accessory) that significantly affects the life of the respective recipient.

In particular, when this disclosure is carried out in the online environment,

conducive to the easy reproduction and perpetuation of information, the creation of

negative profiles on students and their stigmatizing impact.

In fact, neither the punitive nor the pedagogical or preventive function of the sanction

disciplinary, seem to require more than the application of the sanction and its notification to the

respective recipient, given that the widespread disclosure by third parties of such

sanction would imply an unnecessary and excessive restriction of the right to protection of

personal data subject to a special protection regime, provided for in article 10 of the

GDPR, in violation of the principle of proportionality enshrined in subparagraph c) of paragraph 1

of article 5 of the GDPR.

In any case, nothing prevents the publication of statistical or anonymized information.

on sanctions applied in a given educational institution.

2. Personal data of teachers and other employees of the educational institution

higher

2.1. Reports on pedagogical surveys

Under the terms of article 105, paragraph c), of Law no. 62/2007, of 10 September, it is incumbent on

to the pedagogical council of higher education institutions to promote the

evaluation of the teachers' pedagogical performance, by them and by the students, and the its analysis and dissemination. The law does not regulate the form of disclosure of the evaluation.

At issue are documents that include information relating to natural persons identified or identifiable, so its disclosure will always constitute a processing of personal data for the purposes of paragraphs 1 and 2 of article 4 of the GDPR. For in addition to identifying the teachers, and the different aspects of their activity professional, which is also a manifestation of private life, the evaluation that is carried out by students gathers another type of personal data. In fact, the report on pedagogical surveys are part of the assessment carried out by students on each teacher, therefore, information regarding the qualities and knowledge of the identified teachers, whose treatment has a considerable impact on the legal sphere of these.

Indeed, in the professional context, in the performance of the functions that are attached, people reveal characteristics and qualities, which constitute information about themselves, in addition to being subject to subjective evaluations by third parties on such characteristics and qualities, which, taken together, allow a reputational and behavioral profile, creating or promoting a specific perception of teachers' identity and personality.

Furthermore, such value judgments made by third parties result from an anonymous, which, although not inadvisable, leaves room for evaluations less stringent, due to the natural lack of responsibility that accompanies such an appraisal anonymous (aggravated when representativeness in the evaluation is reduced); which, evidently, can have a particularly intense impact on the lives of those which such judgments are formulated, considering the possible inaccuracy of the profile that thus come to be created.

To this extent, the treatment of this information affects not only the fundamental right

protection of personal data, as well as the fundamental right to identity

and, to a certain extent, the fundamental right to privacy,

enshrined in articles 26 and 35 of the Constitution of the Portuguese Republic (CRP).

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Finally, it is clarified that the publication of reports with the evaluation of teachers

does not have the same legal framework as student assessment. This

because the posting of student classification guidelines is based on a

principle of publicity legally imposed and embodied in regulations

administrative procedures, which aims to guarantee the transparency and control of the teaching activity and

equality among students. In addition to the fact that, in the latter case, it is at stake

only quantitative classification and the evaluation takes place in a context that makes

accountability of evaluators is effective, which substantially reduces the risk

of creating the above mentioned behavioral or reputational profiles. No

there are therefore equivalent conditions that allow

invoke a principle of

reciprocity in the knowledge or publicity of the results of the evaluation of

students and faculty.

Thus, considering the role of pedagogical reports, it seems that the purpose

aimed at with the dissemination of the aforementioned report seems to be still possible

through the anonymization of data, in accordance with the principle of

proportionality and the principle of minimization of personal data, under the terms of

Article 5(1)(c) of the GDPR. That is, ensuring that the information is

made available online, with restricted access, to the teaching community, with information

aggregated assessment of the set of subjects per curricular year, or of the set

of the subjects in the course, making it known to each of the professors only the

respective evaluation8.

It is underlined that this does not prevent the result of the evaluation, with the information complete and therefore integrating personal data, must be known to all those within the academic community who are legitimately in a position to take decisions based on the analysis of the information contained therein (e.g., governing body, responsible for the discipline and the evaluators in the seat of the evaluation procedure of performance).

8 The dissemination of the evaluation results of teachers by subject allows, in cases where the teaching is in charge of a single teacher, undermine the purpose of anonymization, so it is not recommends this practice.

2.2. Performance evaluation

With regard to the performance evaluation of teachers, it is important to different rights and interests involved.

Performance evaluation is imposed by article 74-A of the Career Statute University Professor, approved by Decree-Law No. 448/79, of 13 November, lastly amended by Law no. 8/2010, of 13 May, and under the terms of article 74-B, for the purpose of contracting, renewing contracts and changing remuneration positioning of teachers.

The law refers to the regulation of higher education institutions the definition of procedure and evaluation criteria, establishing a set of principles. in between these principles does not appear in the publicity of the procedure and the decision, only highlighting, with interest for this guideline, the respect for the principle of performance differentiation, the impugnability of the approval decision and the applicability of the guarantees of impartiality provided for in the CPA9.

It is not unknown that the performance evaluation of a teacher can have consequences on the career or professional life of another teacher (due to any

limitation of the number of assistant professors to be hired for an indefinite period or
the number of teachers not integrated into the career whose contract can be renewed;
or if quotas are foreseen for the attribution of the classification of excellent
or a limited percentage of performance bonuses). It is recognized, therefore,
there may be interest on the part of some teachers in knowing the final decision
evaluation (i.e., approval of the jury's decision): teachers who are susceptible
to be affected by the decision in the evaluation procedure (in case there are quotas
for the attribution of the classification of excellent, will be those classified with the
rating immediately below excellent; if there is a percentage
delimited number of performance bonuses, only those who obtained a
9 The University Teaching Career Statute only provides for the publication of decisions within the scope of
of teacher recruitment contests – cf. no. 5 of article 62-A.

likely to deserve such an award) or even in a future contracting procedure
(in which case the universe of interested parties is restricted to professors in the same area
teaching and research science). On the other hand, the generic online availability of the
performance evaluation results, with access by any and all teachers of
certain organic unit, appears unnecessary and excessive, in contradiction
with the provisions of subparagraph c) of paragraph 1 of article 5 of the GDPR.
The CNPD admits, in the abstract, as adequate and reasonable a system of permissions
of access that guarantees the availability of the results of the performance evaluation
only to professors directly interested in the evaluation procedure or in the
within the framework of a predictable procurement procedure. However, it recognises, for
hand, that the implementation of a system along these lines assumes such a degree of
complexity, given the volatility of access profiles, which is hardly
feasible; on the other hand, it is undeniable that the right to know the evaluation can be

exercised through a request for access by each of the stakeholders, in the

general terms, and therefore it is not essential that the right be guaranteed through

the publication of information on the Internet - even if, following the request, the

access can be ensured through the allocation, in each case, of the corresponding

permission to access information available on the platform10.

Indeed, at the end of the procedure, if at stake is an assessment that is not

made only in absolute terms but also in relative terms – as incidentally

stems, for public entities in the context of SIADAP 3, from article 75 of Law no.

66-B/2007, of December 28 –, any worker must be recognized as

right to know the basis for the evaluation of other workers, in order to

defense of their rights and interests in the context of such procedure. At

to the extent that the consultation of the intended information without identifying the holders of the

it is liable to jeopardize the comparison of the evaluation carried out, for the purpose of

10 Furthermore, during the procedure, only the person being evaluated and the evaluators can access the information

staff, so that any electronic platform that supports the collection and analysis of the

information for evaluation purposes must be designed in such a way as to limit access to information to

who fills out the respective access profiles.

application of the principle of equality, frustrating the objective of access, it appears that the

right to data protection must be, in this context, compressed, since the

knowledge of personal data (i.e., information identifying your

holders) is presented as the appropriate and necessary means to pursue the

purpose pursued with the access, in accordance with the provisions of paragraph 1 of article

268 of the Constitution of the Portuguese Republic and in articles 82 and 83 of the CPA. AND,

as mentioned, this access can be ensured by different means, from

availability of information in paper form, in digital format or even by

via the granting of the corresponding access permission (created for each request

access) to the relevant information available on the platform.

Thus, not presenting this online availability as essential for

guarantee the knowledge of the information by the direct stakeholders, and not being the

availability in this way, easily achievable without exposing the information to the

professors who are not part of the universe of these direct stakeholders, the CNPD concludes

it is not admissible to make the results of the performance evaluation available in the

website of higher education institutions.

With the necessary adaptations, these conclusions can be extended to the evaluation of

other workers in higher education institutions.

2.3. Disciplinary decisions

On the grounds set out above, in 1.2., also the sanctioning decisions

that have as recipients teachers or other workers of institutions of

higher education shall not be made public or made known to the community

academic.

It is recalled that the publication of administrative acts is only mandatory when imposed

by law (cf. 159.º of the Administrative Procedure Code), being certain that Law no.

62/2007, of September 10, although recognizing disciplinary autonomy to

higher education institutions, refers to the regime

disciplinary law of

workers and in the Labor Code and other applicable labor legislation (cf.

a) and b) of paragraph 2 of article 75), where it is determined that the decisions are not

sanctions are not, as a rule, subject to publication. But even if the law does not

expressly said, the same result would be arrived at by weighing the

rights and interests involved and their harmonization with the principle of

proportionality, and also considering the principle of legal typicality of the sanctioning measures.

In fact, neither the punitive nor the pedagogical or preventive function of the sanction discipline seem to require more than the application of the sanction and its notification to the respective recipient, given that the widespread disclosure by third parties of such sanction would imply an unnecessary and excessive restriction of the right to protection of personal data subject to a special protection regime, provided for in article 10 of the GDPR, in violation of the principle of proportionality provided for in subparagraph c) of paragraph 1 of the Article 5 of the GDPR.

2.4. Other type of information

Finally, it is also important to consider the online availability of another type of information on teachers and workers of higher education institutions.

This information is often associated with the organizational structure of the institution, with identification of the holders of bodies, as well as the workers who make up each department or service. In this regard, it should be noted that the interest in making information about the organization of the institution accessible (whether in a logic of implementing the principle of transparency, whether in a logic of facilitate or speed up contact with the institution) must be made compatible with the rights of data subjects – whether they are teachers or non-teaching workers.

In this perspective, it cannot be overlooked that the principle of minimization of personal data and, more generally, the principle of proportionality require that the provision of this information is carried out to the strictest extent appropriate and necessary to pursue that interest. Hence, being admissible that it be made available on the internet, in free access, not only information related to the

identification (name) and contacts of the holders of the main governing bodies of the

organization (e.g., dean or president, holder or holders of the governing body), such as

also related to those who perform attendance functions in services

open to the general public (e.g., secretariat, library).

On the other hand, the disclosure of information regarding the remaining workers who are part of

the other services do not seem to be of use to people outside the community

academic level of the institution in question, so it can only be considered appropriate, necessary

and not excessive the availability of the names of these workers as well as

their contact details (e.g., email address, extension

telephone,

identification of the office or room) in an online context with access reserved for

students and employees of the institution.

* Approved at the plenary session of the National Data Protection Commission on 2

October 2018.