

INFORMATION, COMMUNICATION & TECHNOLOGY

CNPD GUIDELINES

VdA EXPERTISE



May 2023

CNPD recently approved five new Guidelines and launched a public consultation on the Performance Evaluation of the Data Protection Officer (DPO).

The National Data Protection Authority (CNPD) recently approved five important guidelines for organisations, addressing different topics of data protection.

CNPD also launched a public consultation on the draft [Guidelines on the performance evaluation of employees that are DPOs](#). The consultation is open until the 9th of June 2023.

I. DATA SHARING OVER THE INTERNET

[Guidelines on the webcasting of meetings of municipal bodies](#)

- Live and online audio and video broadcasting of meetings of local government bodies involves the processing of personal data.
- Given the risks of exposure and undue reuse of images and statements made, CNPD considers that prior and express consent of all individuals involved in the filming and transmission is necessary to ensure the lawfulness of such data processing.
- CNPD also recommends that the transmission should only occur on the website of the public entity in question, in accordance with the principles of proportionality, data minimisation, and open administration.

[Guidelines on the online publication of the minutes of collegial bodies meetings](#)

- Although it stems from the principle of transparency of the administrative activity, the online publication of the minutes of meetings of collegial bodies entails data protection risks.
- The decision to publish the minutes (and other supporting documents) should be based on a balancing test of the interests and rights at stake.

- As a rule, the disclosure of administrative documents is only acceptable when they do not contain any personal data.
- CNPD considers such disclosure to be lawful only when online publication is required by law. Nonetheless, even in that case, the minutes should be drafted in accordance with the principles of minimisation and proportionality – i.e., redacting personal data to the minimum necessary, in particular in what regards special categories of data.

II. MAKING DATA AVAILABLE TO THIRD PARTIES BY OTHER MEANS

[Guidelines on making available personal data to third parties in the context of administrative procedures](#)

- The legitimate interest of an interested third-party in an administrative procedure may justify access to personal data, taking precedence over the rights and interests of the data subjects.
- When the third-party is not involved in the administrative procedure, prior consent of data subjects or proof that the third-party has a direct, personal, legitimate, relevant and constitutionally protected interest, is required to access the personal data.
- In both scenarios, CNPD emphasizes the importance of adhering to the principle of data minimisation, which entails redacting personal data that is not relevant to the procedure.

[Guidelines on the access to personal data held by a public entity acting as data processor](#)

- Access to personal data held by a public entity acting as a data processor (on behalf of another public entity) should only be granted based on the data controller's instructions.
- Consequently, the public entity should only grant further access to administrative documents containing personal data when authorized or instructed to do so by the data controller.
- When the information sought is not solely the responsibility of one entity (the information depends on a combination of personal data for which multiple entities are responsible), the CNPD distinguishes two scenarios:
 - i. If the responsible parties have distinct and unrelated purposes for processing the data → the processor (public entity) shall not link personal data to ensure access to the requested information.
 - ii. If the purpose of the processing is the same or if the two purposes are directly related → the processor (public entity) may, upon instruction from the controller and in compliance with the duty of providing information, link the relevant personal data, with the intention of making it available to third parties.

III. DATA PROTECTION OFFICER (DPO)

[Guidelines on the incompatibility of the accumulation of DPO/IAO functions](#)

The CNPD considers that there is a potential conflict of interests between the roles of DPO and IAO (Information Access Officer), to the extent that IAO's decision-making process is subject to the control and audit of the DPO. Therefore, the accumulation of DPO and IAO functions should be considered incompatible.

[Guidelines on the performance evaluation of an employee who is a DPO](#)

Due to the absence of specific rules regulating the legal status of the DPO within public entities, particularly concerning their performance evaluation when they have additional functions, the CNPD is issuing new guidelines, which are currently under public consultation until June 9, 2023.

In the draft guidelines, CNPD asserts the following:

- In situations where the DPO accumulates other functions, it is essential to clearly define the roles and responsibilities within and outside the DPO's function, ensuring there are no conflicts of interest
- The manager of the department where the employee performs activities outside the DPO's function cannot set objectives for the DPO role or evaluate their performance
- Therefore, the evaluation of the employee with multiple roles is limited to the activities performed outside the DPO's function
- In cases where the employee exclusively carries out DPO duties, their assessment should be conducted by the highest hierarchical body to which the DPO reports.

The CNPD also emphasizes the organization's obligation to provide the DPO with the necessary resources for fulfilling their duties, maintaining their knowledge and supporting their professional development.

It is important to note that this matter is also of interest to the European Data Protection Board, as evident from the ongoing EU Coordinated Enforcement Action 2023 concerning the position of DPOs in organizations.

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