

As Data Controller, is Affinity allowed to inform their employees from the same working group/team that any colleague is affected by COVID-19, is under quarantine, or has recently been exposed to the virus?

Affinity is allowed to inform their employees that any colleague has tested positive for COVID - 19, has been quarantined or has been in contact, in the last 14 days, with a person then declared positive to COVID-19 if this is necessary to protect the other employees' health. However, as a general rule, Affinity shall not reveal the affected person's identity.

On 14 March 2020, the "*Shared protocol regulating measures to counter and contain the spread of Covid-19 virus in workplaces*" (the **Protocol**), introducing – *inter alia* – some specific measures to protect the right to data protection in the employment relationships, was signed.

Therefore, all companies shall implement the anti-contagion measures provided by the Protocol and adequately inform employees and anybody accessing the company premises.

The provided measures shall be complied with by the employees. As a matter of example, any employee shall not access or remain in the company premises if – even after the access – dangerous conditions are detected (flu symptoms, fever, the circumstance that the same employee comes from areas at risk or has had contacts with people affected by COVID-19 during the previous 14 days), and the employee shall promptly declare the foregoing to the employer. The worker is also obliged to immediately inform the HR manager of the onset of any flu symptom during the performance of the work duties in order to ensure that the appropriate measures are taken.

In respect of the management of any symptomatic employee, the Protocol specifies that the employer shall provide the procedures suitable to ensure the confidentiality and dignity of the worker. Such guaranties shall be ensured, as a matter of example, in the event (i) of temporary isolation of an employee due to exceeding the body temperature threshold, (ii) that the worker informs the HR office to have had, outside the company's context, contact with individuals who have tested positive for COVID-19 and (iii) of dismissal of the employee, who develops fever and symptoms of respiratory infection during work activity.

The personal data of the employee affected by COVID-19 shall not be disclosed and may only be notified to the Health Authority for tracing the chain of "close contacts" of the employee tested positive.

In a recent interview, the Privacy Authority has reiterated that exceptional measures to face health emergency shall be allowed, provided that such measures comply with the principle of adequacy and proportionality.

Therefore, in accordance with such principles, if the purpose of protecting the employees' health could be ensured and achieved without disclosing the identity of the employee affected by COVID-19, Affinity should avoid to disclose such identity.

Processing of data by the data controller and elaboration of lists with personal data of persons affected by COVID- 19

By a communication of 2 March 2020, the Privacy Authority stated that employers shall refrain from collecting, in advance and in a systematic and generalised manner – including through either specific requests to each single employee or unauthorised investigations – information about the presence of

any flu sign of the employee or people closest to him/her, or in any case concerning areas outside the work environment (the investigation and collection of information on Coronavirus' typical symptoms and recent movements of each individual are indeed assigned to health operators and Civil Protection).

However, such provision seems to be superseded by the Protocol. Indeed, in order to implement the anti-contagion safety measures, the Protocol provides the employer's right to detect the employees' body temperature, before they access the workplace, as well as to receive from the same employees a declaration certifying that they do not come from epidemiological risk areas and the absence of contacts, in the latest 14 days, with subjects tested positive for COVID-19.

Such collection certainly involves the processing of personal data, also health-related, which shall be only allowed for purposes of prevention from contagion and until the end of the state of emergency.

The same Protocol identifies Article 1 No. 7, letter d) of the Decree of the President of the Ministers' Council of 11 March 2020 (concerning urgent measures for the containment and management of the COVID-19 epidemiological emergency) as the legal basis for the processing.

However, the acquisition of employees' temperature control and personal data shall be subject to certain conditions of compliance with the regulations on the data protection, albeit in an emergency context.

To such end, the Protocol suggests:

- 1) to detect the temperature and to not record the acquired data. It shall be possible to identify the concerned person and record the exceeding of the temperature threshold only if it is necessary to document the reasons that prevented access to the company's premises;
- 2) to provide – even verbally – the information about the processing of personal data (which may omit any information already in the possession of the data subject);
- 3) to define the appropriate security and organisational measures to protect data. In particular, under the organisational perspective, it will be necessary to identify the persons responsible for data processing and provide them with the necessary instructions;
- 4) if a declaration – certifying the non-provenience from epidemiological areas at risk and the absence of contacts, in the latest 14 days with persons tested positive for COVID-19 – is required to be issued, to collect only the data necessary, adequate and relevant to prevent contagion by COVID-19. As a matter of example, if a statement about contacts with people tested positive for COVID-19 is required, it is necessary to refrain from asking additional information about the person tested positive. Alternatively, if a statement about the provenience from epidemiological areas at risk is required, it is necessary to refrain from asking additional information about the specificity of the areas.

In light of the above, Affinity shall be allowed to hold a list of employees who have tested positive for COVID-19 only if it is necessary to document the reasons that have prevented the access to the company's premises, and provided that such list only includes the information necessary and indispensable for the purpose of prevention from contagion. The access to such data shall be allowed and limited to authorised and properly trained persons only (as a matter of example, the occupational doctor or the person in charge for Occupational Safety). No further processing for different purposes shall be allowed.