

Opinion in relation to a council consultation on the request for access to video surveillance images by a police force

A letter from the City Council (...) is presented to the Catalan Data Protection Authority (...) in which it asks if they can provide the images recorded by the video surveillance cameras located in a square in the municipality to the Police (...) as requested by this police force.

Attached, to the letter of inquiry, is a copy of the official request for the images carried out (...) at the City Council on April 13, 2018; copy of the minutes of the Security Committee on the protection of personal data of the City Council of April 26, 2018, in which it is agreed to deny the request and make a consultation with this Authority; and, copy of the resolutions issued by the General Directorate of Security Administration, in which, respectively, the installation of the video surveillance system is authorized (year 2012) and the renewal of said authorization is agreed (year 2017).

Having analyzed the request and the documentation that accompanies it, and having seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The City Council (...) states, in its letter of inquiry, that the Police (...) has sent them a letter, of which they attach a copy, in which they request the images recorded by the video surveillance cameras that they are set up in a town square on April 10 and 12, 2018, between 7:30 p.m. and 10:00 p.m.

He then explains that the City Council's Personal Data Protection Commission agreed to deny the request made by the Police (...) pending the judicial authority claiming these images, given that, in his judgment, facilitating them could attack the right to honor, privacy and the self-image of all the people who were present.

In view of these facts, the City Council requests the opinion of this Authority on the provenance of providing said images to the Police (...).

This question is then examined from the point of view of the fundamental right to the protection of personal data (Article 18.4 CE), which is the perspective from which this opinion is issued.

In this sense, agree that, given the lack of transposition of Directive (EU) 2016/680, of the Parliament and of the European Council, of April 27, 2016, relating to the protection of natural persons with regard to processing of personal data by the competent authorities for the purposes of prevention, research, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of this data and by which the Framework Decision is repealed 2008/977/JAI of the Council, it is considered appropriate to analyze the case at hand taking into account the provisions of Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD), which remain temporarily valid.

III

The City Council considers whether it is possible to provide the Police (...) with the images recorded by its video surveillance system - which, according to the information provided, corresponds to the Local Police -, without any requirement or court order in this regard.

The still valid LOPD defines the assignment or communication of personal data as "any disclosure of data made to a person other than the interested party" (article 3.i)).

Article 11 of the LOPD, relating to the regime applicable, in general, to communications or transfers of data, provides that the data subject to treatment "can only be communicated to a third party for the fulfillment of purposes directly related to legitimate functions of the assignor and the assignee with the prior consent of the interested party" (section 1).

However, section 2 of this same article establishes that the said consent is not necessary when, among other cases:

- The assignment is authorized in a law or regulation with the rank of law (letter a)).
- The communication that must be made has as recipient, among others, the fiscal ministry or judges or courts (letter d)).

Taking into account that the request for the images is made by the Police (...), it is relevant, for the purposes of establishing the concurrence of any of these exceptions, to refer to the regulations that regulate the specific functions of this police force.

Law 10/1994, of 11 July, on the police of the Generalitat - Mossos d'Esquadra (hereinafter, LPGME), in line with Organic Law 2/1986, of 13 March, regulating the Forces and State Security Forces (hereinafter, LOFCSE), regulates the functions that correspond to the PG-ME, in the following terms:

"Article 12

1. The Mossos d'Esquadra Corps, as ordinary and comprehensive police, performs the functions that the legal system attributes to the forces and security forces, and, in specific:

first Citizen security police functions: a) Protect people and property. b) Maintain public order. c) Monitor and protect people, bodies, buildings, establishments and dependencies of the Generalitat, and guarantee the normal operation of the facilities and the safety of the users of the services. d) Monitor public spaces. e) Protect demonstrations and maintain order in large human concentrations. f) Provide assistance in cases of accident, catastrophe or public calamity, and participate in the execution of civil protection plans in the manner determined by law. g) Provide assistance in rescue operations, if required. h) Carry out, within the competences of the Generalitat, the functions of protecting public safety attributed to the security forces and bodies by Organic Law 1/1992. i) Prevent criminal acts. j) The rest of the functions attributed to him by current legislation.

second Functions of the administrative police:

a) Ensure compliance with the laws approved by the Parliament of Catalonia and the special provisions and orders issued by the other organs of the Generalitat. b) Inspect the activities subject to the regulation or discipline of the Generalitat, and report any illegal activity. c) Use coercion with a view to the forced execution of acts or provisions of the bodies of the Generalitat.

d) Ensure compliance with the laws and other provisions of the State applicable to Catalonia and guarantee the operation of essential public services. e) Ensure compliance with regulations on the environment, hydraulic resources and hunting, fishing, forestry and any other kind related to nature conservation. f) Ensure compliance with the regulations on Catalan cultural heritage, with regard to safeguarding and protecting it and in order to avoid its plunder or destruction. g) Collaborate with the local police and with the forces and security bodies of the State in the collection, processing and reciprocal communication of information of police interest. h) Monitor, inspect and control private security companies, their services and actions and the means and personnel in their charge, in the terms established by current legislation. i) The rest of the functions attributed to him by current legislation.

third The judicial police functions that correspond to it in accordance with article 13.5 of the Statute of Autonomy and which are established by article 126 of the Constitution, articles 443 and 445 of the Organic Law of the Judiciary and the rest of the procedural legislation in force, without prejudice to those corresponding to the local police.

These functions are carried out by means of the ordinary services of the Corps or by means of its organic judicial police units, on its own initiative or at the request of the judicial authorities or the fiscal ministry.

fourth Functions of intervention in the friendly resolution of private conflicts, if required.

fifth Functions of cooperation and collaboration with local entities, in accordance with Law 16/1991, of July 10, of local police: a) Provide technical and operational support to local police when they cannot fully assume a service, due to its volume or specialization. b) Exercise, in addition to the functions indicated in this article, those of the local police in the municipalities that do not have them. c) In the cases established by letters a) and b), the Generalitat and the local corporations must sign the corresponding cooperation agreements, in which the objectives, resources, financing must be defined, in any case, the organization and the respective obligations and faculties.

sixth The other functions that are transferred or delegated to him by the procedure established by article 150.2 of the Constitution.

seventh The other functions entrusted to him. (...)"

It follows from these forecasts that the PG-ME is assigned the exercise of functions of various natures, such as, for the purposes they are concerned, functions of the Judicial Police and functions of the Citizen Security Police.

IV

It cannot be ruled out, in view of the information available, that the request for the images by the PG-ME was made in the present case in the exercise of their functions as Judicial Police (article 12.tercer LPGME). In the consultation letter, the City Council questions that the request is not accompanied by a court order or requirement.

If this is the case, it must be taken into account that, given that these images will be addressed to the Ministry of Finance or the competent jurisdictional body, because this is what the applicable legislation requires, as we will see below, their communication or transfer to the PG-ME would find protection in the provisions of article 11.2.d) of the LOPD.

In accordance with this precept of the LOPD, remember, the consent of the owner of the data is not necessary when the communication to be made is addressed, among others, to the Public Prosecutor's Office or the judges and courts

Having said that, it is necessary to examine whether another rule with the status of law would enable the intended communication in the present case (article 11.2.a) LOPD).

Article 547 of Organic Law 6/1985, of July 1, on the Judiciary (hereinafter, LOPJ), provides that:

"The function of the Judicial Police includes assistance to the courts and tribunals and the Public Prosecutor's Office in the investigation of crimes and in the discovery and securing of criminals. This function will apply, when required to provide it, to all members of the Security Forces and Bodies, whether they depend on the central government or the autonomous communities or local entities, within the scope of their respective powers.

Article 549.1 of the LOPJ specifies the functions of the units of the Judicial Police, in the following terms:

"1. The following functions correspond specifically to the units of the Judicial Police: a) The investigation of those responsible and the circumstances of the criminal acts and the arrest of the first, giving an account then to the judicial and fiscal authority, in accordance with the provisions of the laws . b) Assistance to the judicial and fiscal authorities in any actions that must be carried out outside their headquarters and require the presence of the police. c) The material performance of the actions that require the exercise of coercion and order the judicial or fiscal authority. d) The guarantee of compliance with the orders and resolutions of the judicial or fiscal authority. e) Any other of the same nature in which your cooperation or assistance is necessary and ordered by the judicial or fiscal authority.

2. In no case may the members of said units be entrusted with the practice of actions that are not those of the Judicial Police or those derived from them."

On the other hand, article 282 of the Criminal Procedure Law, approved by the Royal Decree of September 14, 1882, (hereinafter, LECrim), provides that:

"The Judicial Police's purpose and will be the obligation of all those who make it up, to find out the public crimes that are committed in its territory or demarcation; practice, according to his attributions, the necessary diligence to check and discover criminals, and collect all the effects, instruments or evidence of the crime whose disappearance there would be danger, making them available to the judicial authority. (...)."

In line with these forecasts, article 2 of Royal Decree 769/1987, of June 19, regulating the Judicial Police, specifies that:

"The members of the Security Forces and Security Forces, in their functions of judicial police, will develop the tasks expressed in article 1.º, at the request of the Judicial Authority, the Prosecutor's Office or their police superiors or on their own initiative through of the latter, in the terms provided for in the following articles."

Article 4 of this RD 769/1987 adds that:

"All the components of the Security Forces and Bodies, whatever their nature and dependence, will practice on their own initiative and according to their respective attributions, the first steps of prevention and assurance as soon as they have notice of the perpetration of the allegedly criminal act, and the

occupation and custody of the objects that came from the crime or were related to its execution, giving an account of all this in the legal terms to the Judicial or Fiscal Authority, directly or through the Organic Units of the Judicial Police."

From these precepts it can be inferred that, together with the functions attributed to the Judicial Police for the fulfillment of the actions ordered by the judicial authority or the Public Prosecutor's Office (those accompanied by a judicial order or by the public prosecutor), there are also others, directly aimed at the investigation of criminal actions and the arrest of those allegedly responsible, which the Judicial Police can carry out prior to the initiation of the corresponding criminal procedure at the request of a superior or even on their own initiative.

That is to say, that the Judicial Police can also carry out proceedings related to allegedly criminal acts without having, at first, a request from the judicial authority or the Prosecutor's Office, but it being necessary in these cases that they the facts immediately brought to the attention of the judicial authority or the Public Prosecutor's Office (article 549.1.a) LOPJ and article 282 LECrim, cited).

To this it should be added that the LOPJ - in accordance with article 118 of the EC - foresees an obligation of collaboration of all public and private entities in judicial proceedings. Thus, article 17.1 provides that:

"1. All persons and public and private entities are obliged to provide, in the manner established by law, the collaboration required by the Judges and Courts in the course of the process and in the execution of the decision, with the exceptions established by the Constitution and the laws, and without prejudice to the reimbursement of the expenses and the payment of the due remunerations that proceed in accordance with the law".

Obligation that is also included in article 10.1.e) of Law 16/1991, of July 10, of the local police (hereafter, LPL), according to which the local police must:

"e) Collaborate with the Administration of Justice and assist it in the terms established by law."

Therefore, for the purposes of the data transfer regime (article 11 LOPD), it must be borne in mind that the communication of the images recorded by the video surveillance system available to the Local Police to the PG-ME, requested by this police force in the exercise of their functions as Judicial Police, whether or not their request is accompanied by a judicial request or from the Prosecutor's Office, it would be enabled by the provisions of the LOPJ and the LECrim examined, not being necessary, consequently, the consent of those affected (article 11.2.a) LOPD).

v

Having said that, it cannot be ruled out that the request for the images by the PG-ME was carried out in the exercise of its public security police functions (Article 12. First LPGME).

Taking into account that the request is made to another police force (the Local Police), it is necessary to consider whether the provisions of article 21 of the LOPD could apply to the present case.

Section 1 of this article establishes that "personal data collected or prepared by public administrations for the exercise of their powers must not be communicated to other public administrations for the exercise of different powers or of competences when they deal with different matters, except when the object of the communication is the subsequent processing of the data for historical, statistical or scientific purposes". Section 4 of the same article states that "in these cases the consent of the affected person is not necessary".

In this sense, article 10.4.c) of Royal Decree 1720/2007, of December 21, which approves the Regulation for the deployment of the LOPD (hereafter, RLOPD) complements the legal regulation by pointing out that it will not be the consent of the interested party is necessary when the transfer between public administrations is carried out "for the exercise of identical powers or that refer to the same matters".

The LOFCSE, already cited, establishes that "the maintenance of Public Security will be exercised by the different Public Administrations through the Security Forces and Bodies" (article 1.4).

This Law regulates in general terms the autonomous police (Title III) and the local police (Title V) and considers them as another security body alongside the state police (article 2). Likewise, it specifies common functions for all Security Forces and Bodies (article 11), in the following terms:

"1. The State Security Forces and Bodies have the mission of protecting the free exercise of rights and liberties and guaranteeing citizen security through the performance of the following functions: a) Ensure compliance with general laws and provisions, executing the orders that they receive from the Authorities, within the scope of their respective competences. b) Help and protect people and ensure the conservation and custody of goods that are in a situation of danger for any reason. c) Monitor and protect public buildings and facilities that require it. d) Ensure the protection and security of high personalities. e) Maintain and restore, as the case may be, public order and security. f) Prevent the commission of criminal acts. g) Investigate crimes in order to discover and arrest the alleged perpetrators, secure the instruments, effects and evidence of the crime, making them available to the competent Judge or Court and prepare the relevant technical and expert reports. h) Capture, receive and analyze any data that is of interest to public order and security, and study, plan and execute crime prevention methods and techniques. i) Collaborate with the civil protection services in cases of serious risk, catastrophe, or public calamity, in the terms established in the civil protection legislation."

Both the LPL (article 11) and the LPGME (article 12), previously cited, incorporate this set of functions in their legal texts.

Thus, in accordance with article 11 of the LPL, the following functions correspond to the local police that depend on the municipalities of Catalonia, in their scope of action:

"a) To protect the authorities of the local corporations and to watch and guard the buildings, installations and dependencies of these corporations. b) Order, signal and direct traffic in the urban core, in accordance with what is established by the traffic rules. c) Instruct attestations for traffic accidents that have occurred within the urban core, in which case they must communicate the actions taken to the competent security forces or bodies. d) Act as administrative police, in order to ensure compliance with regulations, ordinances, bans, resolutions and other municipal provisions and acts, in accordance with current regulations. e) Act as judicial police, in accordance with article 12 and current regulations. f) Carry out preventive measures and actions aimed at preventing the commission of criminal acts, in which case they must communicate the actions carried out to the competent security forces or bodies.

g) Collaborate with the forces or security forces of the State and with the Autonomous Police in the protection of demonstrations and in the maintenance of order in large human concentrations when they are required to do so. h) Cooperate in the resolution of private conflicts, when required to do so. i) Monitor public spaces. j) Provide assistance in accidents, catastrophes and public calamities, participating, in accordance with the provisions of the laws, in the execution of civil protection plans. k) Ensure compliance with current environmental and environmental protection regulations. l) Carry out actions intended to guarantee road safety in the municipality. m) Any other police and security function that, in accordance with current legislation, is entrusted to them."

And, in accordance with article 12.1 of the LPGME, it corresponds to the PG-ME, among others:

"First. Citizen security police functions: a) Protect people and property. b) Maintain public order. c) Monitor and protect people, bodies, buildings, establishments and dependencies of the Generalitat, and guarantee the normal operation of the facilities and the safety of the users of the services. d) Monitor public spaces. e) Protect demonstrations and maintain order in large human concentrations. f) Provide assistance in cases of accident, catastrophe or public calamity, and participate in the execution of civil protection plans in the manner determined by law. g) Provide assistance in rescue operations, if required. h) Carry out, within the competences of the Generalitat, the functions of protecting public safety attributed to the security forces and bodies by Organic Law 1/1992. i) Prevent criminal acts. j) The rest of the functions attributed to him by current legislation. (...)"

It follows from these forecasts that both police forces (the Local Police of the City Council and the PG-ME) exercise powers over the same matter, such as public safety, and are assigned, among others, police functions of public safety, such as the prevention and investigation of criminal acts or facts.

According to the information available, the communication of the images recorded by the Local Police through its video surveillance system to the PG-ME is part of a specific investigation that the latter police force is carrying out for the purposes of to clarify alleged criminal facts and to identify the person or persons responsible.

It can be understood, therefore, that the intended purpose with the communication of the images could be related to the competences that the examined regulations attribute to both police forces in matters of public security and that the assumption foreseen in the article 21 of the LOPD.

Having said that, Organic Law 4/2015, of March 30, on the protection of public safety (hereinafter, LOPSC), foresees an obligation of collaboration between the State Security Forces and Bodies for the exercise and development of the set of functions attributed to them, which also includes the duty to communicate information that may be relevant and necessary for that purpose.

Thus, the LOPSC provides that:

"Article 6. Inter-administrative cooperation.

The General Administration of the State and the other public administrations with competences in matters of public security will be governed, in their relations, by

the principles of cooperation and institutional loyalty, providing the information in accordance with current legislation and the technical assistance necessary in the exercise of their respective powers, and, when necessary, coordinating the actions aimed at guaranteeing compliance with this Law, in accordance with the provisions of Organic Law 2/1986, of March 13, and Law 30/1992, of November 26, on the Legal System of Public Administrations and the Common Administrative Procedure.”

"Article 7. Duty of collaboration.

1. All authorities and public officials, within the scope of their respective powers and in accordance with their specific regulations, must collaborate with the authorities and bodies referred to in article 5, and provide them with the assistance that is possible and adequate for the achievement of the purposes related in article 3.

When, by reason of their position, they have knowledge of facts that seriously disturb public security or of those that can rationally be inferred to produce a serious disturbance, they will be obliged to immediately notify the competent authority. (...).”

In the same sense, the LPGME establishes, in its article 12, that:

"2. The functions established by section 1 are fulfilled under the principles of cooperation, coordination and mutual collaboration with the rest of the security forces and bodies. From these principles derives the convenience for the institutions involved to supply each other with police information.”

In the present case, the images recorded by the Local Police could be of interest for the investigation being carried out by the PG-ME, focused on the identification of the person responsible or persons responsible for an alleged crime of injury. It would, therefore, be information of police interest that, in accordance with these precepts, should be communicated to the PG-ME.

In addition to all this, it is necessary to take into account specifically the provisions of Organic Law 4/1997, of August 4, which regulates the use of video cameras by the Security Forces and Bodies in public places (hereinafter, LOV) .

Article 1.1 of LOV establishes that:

"1. This Law regulates the use by the Security Forces and Cuerpo de Seguridad of video cameras to record images and sounds in public places, open or closed, and their subsequent treatment, in order to contribute to ensuring citizen coexistence, the eradication of violence and peaceful use of public roads and spaces, as well as preventing the commission of crimes, misdemeanors and infractions related to public safety. (...).”

Article 8 of this LOV, relating to the conservation of recordings, establishes that:

"1. The recordings will be destroyed within a maximum period of one month from their capture, unless they are related to serious or very serious criminal or administrative offenses in matters of public security, with an ongoing police investigation or with an open judicial or administrative procedure. 2. (...).

3. The assignment or copying of the images and sounds obtained in accordance with this Law is prohibited, **except in the cases provided for in section 1 of this article.** (...).”

It follows from this precept that the transfer of the images recorded by the Forces and Security Forces remains prohibited, unless these images are related to

serious or very serious criminal or administrative offenses in matters of public security, with an ongoing police investigation or with an open judicial or administrative procedure.

In similar terms, Decree 134/1999, of 18 May, regulating video surveillance by the police of the Generalitat and the local police of Catalonia (articles 14 and 16) is pronounced.

All in all, it is understood that the communication of the images recorded by the video surveillance system of the Local Police to the PG-ME, framed in the context of a specific investigation for allegedly criminal acts, would be protected both by the forecasts of the LOV (article 11.2.a) LOPD) as by the LOPD itself (article 21), as it concerns information relevant to the exercise of the functions in matters of public security that are legally attributed to them.

VI

Having said that, it must be agreed that, regardless of whether the PG-ME is acting in the present case in the exercise of their functions of public security or of the Judicial Police, the practice of proceedings that entail the collection of personal information must be appropriate- se, like any other data processing, to the rest of the principles established in data protection legislation.

Specifically, and for the purposes of interest, it should be borne in mind that, in accordance with article 4 of the LOPD, relating to the principles of purpose limitation and data minimization:

- "1. Personal data can only be collected to be processed, as well as subjected to this processing, when they are adequate, relevant and not excessive in relation to the scope and the determined, explicit and legitimate purposes for which they are have obtained
2. The personal data subject to treatment cannot be used for purposes incompatible with those for which the data were collected. (...)"

In application of these principles, in a case like the one proposed, it is required that:

- a) In the request for information it is duly certified that obtaining the data is necessary for the prevention of a real and serious danger to public safety or for the suppression of criminal offenses and, if as the case may be, these are data deserving of special protection (article 7 LOPD), which are absolutely necessary for the purposes of a specific investigation.
- b) It is a concrete and specific request for data, duly motivated and linked or related to a certain ongoing police investigation or judicial procedure.

The City Council attaches to its letter of inquiry a copy of the police proceedings addressed by the PG-ME, from the content of which it can be seen that:

- The request for the images is part of a specific investigation carried out by a certain information unit of the PG-ME initiated following a complaint for an alleged crime of injuries, in relation to which the person or the persons responsible have not yet been identified.
- The requested images are specified, detailing, for this purpose, the days and the time slot which is of interest for said investigation.
- The request is motivated, stating that the said information unit has become aware that the reported person could have attended the rallies that took place in the municipality on the days indicated.
- It is recorded that the sole purpose of the request is to clarify the facts and identify them responsible

- It is intended to expand previous police proceedings, carried out by a citizen security unit of the same police force, which were already handed over to the competent jurisdictional body.

Therefore, the request for the images in the present case by the PG-ME would comply with the aforementioned principles of purpose limitation and data minimization.

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

The communication of the images available from the Local Police of the City Council of (...) to the PG-ME when, despite not providing a court order, requests them in the exercise of its functions as a Judicial Police constitutes a transfer of data enabled both by article 11.2.d) of the LOPD and by the provisions of Organic Law 6/1985, of July 1, of the Judiciary.

The communication of these images to the PG-ME in the exercise of its powers in matters of public security would also be enabled both by Organic Law 4/1997, of August 4, which regulates the use of video cameras by the Security Forces and Bodies in public places, as per article 21 of the LOPD.

In any case, the request for images must comply with the principles of purpose limitation and data minimization (article 4 LOPD), requirements that, in view of the information available, would be met in the present case.

Barcelona, May 17, 2018