

CNS 26/2019

**Opinion in relation to a City Council consultation on the possibility of installing cameras in the municipal police station**

An inquiry from a City Council is presented to the Catalan Data Protection Authority regarding the installation of cameras in the municipal police station, for security purposes and also to control the work functions of police personnel.

On May 13, 2019, the City Council expanded the consultation and requested an opinion regarding "the proposal to install cameras that only record images for the purpose of labor control; how the viewing of the cameras should be done; the term of conservation of the images, and if it is considered appropriate that the video surveillance cameras can have two purposes: those of the security of the facilities and of labor control."

The consultation is accompanied by two plans, the first corresponding to the existing cameras on 9/4/2019, and the second to those planned to be installed ("non-existing cameras") in the police station building.

Having analyzed the request, and given the current applicable regulations, and given the report of the Legal Counsel, the following is ruled.

I

(...)

II

The consultation explains that, as a result of a labor conflict with municipal police workers, for a certain period of time the police station would have been staffed by only one or two workers. According to the consultation, this would have endangered the safety of workers and municipal facilities.

The City Council explains that the police station already has a system of video surveillance cameras for security purposes, and asks about the possibility of installing more cameras in the municipal police station, also for the purpose of monitoring workers. Specifically, the City Council asks about "the possibility of installing cameras inside offices, excluding rest areas, changing rooms and dining rooms."

The query attaches two plans, the first, referring to the "Camera map existing on 09/04/2019 in the Local Police building of (...)" (hereafter, Map 1), and the second, to the " Map of cameras NOT existing on 04/09/2019, in the Local Police building of (...)" (hereafter, Map 2); in both cases, the spaces or outbuildings where the existing video surveillance cameras are located are identified (Map 1), and the spaces or outbuildings where the new cameras are expected to be located (Map 2).

In this context, the consultation formulates the following questions:

**"1.- If they think it is correct, from the point of view of data protection, the proposal to install cameras that only record images for the purpose of labor control.**

**2.- How do they consider that the viewing of the cameras should be done for the purpose of labor control, given that the control of the video surveillance cameras is carried out by the Local Police.**

**3.- If they think it is appropriate from the point of view of data protection that all the video surveillance cameras can have the two purposes, those of the security of the facilities and that of labor control.**

**4.- What do you think should be the retention period for camera images for the purpose of labor control."**

Given the query in these terms, with regard to the regulatory framework applicable to video surveillance, it is necessary to refer to Regulation (EU) 2016/679, of April 27, general data protection (RGPD), according to which they are personal data "all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person; (art. 4.1 RGPD).

Thus, it is necessary to start from the basis that the processing of personal data, specifically, the image of natural persons through video surveillance systems is subject to the principles and guarantees of the personal data protection regulations, that is to say, the RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD)).

### III

Regarding the legal regime applicable to video surveillance, according to article 22 of the LOPDGDD:

**"1. Natural or legal persons, public or private, may carry out the processing of images through camera or video camera systems with the aim of preserving the security of people and property, as well as their facilities.**

**2. Images of the public road may only be captured to the extent that it is essential for the purpose mentioned in the previous section.**

**However, it will be possible to capture the public road in a higher extent when it is necessary to guarantee the security of assets or strategic facilities or infrastructures linked to transport, without in any case being able to suppose the capture of images of the interior of a home private**

**3. The data will be deleted within a maximum period of one month from its collection, except when it must be kept to prove the commission of acts that threaten the integrity of persons, goods or facilities. In such a case, the images must be made available to the competent authority within a maximum period of seventy-two hours from the time the existence of the recording was known.**

The blocking obligation provided for in article 32 of this organic law will not apply to these treatments.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 will be deemed fulfilled by placing an information device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person responsible and the possibility to exercise the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679. A connection code or internet address to this information may also be included in the information device.

In any case, the person responsible for the treatment must keep the information referred to in the aforementioned regulation at the disposal of those affected.

5. Pursuant to article 2.2.c) of Regulation (EU) 2016/679, the processing by a natural person of images that only capture the interior of their own home is considered excluded from its scope. This exclusion does not cover the treatment carried out by a private security entity that had been hired to monitor a home and had access to the images.

6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the Security Forces and Bodies and by the competent bodies for surveillance and control in prisons and for control, regulation, traffic surveillance and discipline, will be governed by the legislation transposing Directive (EU) 2016/680 (LCEur 2016, 606), when the treatment has the purpose of prevention, investigation, detection or prosecution of criminal offenses and prevention against threats to public security. Outside of these assumptions, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to what is provided for in Law 5/2014, of April 4, on Private Security and its implementing provisions.

8. The treatment by the employer of data obtained through camera or video camera systems is subject to the provisions of article 89 of this organic law."

The specific regime of video surveillance in the police field is provided for in Organic Law 4/1997, of August 4, which regulates the use of video cameras by security forces and bodies in public places (LOVFCS), deployed in Catalonia by Decree 134/1999, of 18 May, regulating video surveillance by the police of the Generalitat and the local police of Catalonia, and by the Order of 29 June 2001, regulating of the means by which the existence of fixed video cameras installed by the police of the Generalitat and the local police of Catalonia in public places is reported.

According to article 1.3 of Decree 134/1999: "This provision will not apply to fixed cameras that need to be installed by the Generalitat police or local police in buildings, outbuildings or facilities owned or assigned to fulfillment of their functions, as long as these cameras are exclusively intended to guarantee the security and internal or external protection of these dependencies."

In relation to article 1.3 of Decree 134/1999, we mention Decree 78/2010, of June 22, on the installation of video surveillance devices in police departments

of the Generalitat, which aims to regulate the installation regime of fixed cameras and video surveillance devices and their use by the Generalitat police inside buildings, outbuildings or own facilities or attached to the fulfillment of their functions in order to guarantee the safety and protection of people and goods (article 1.1 Decree 78/2010). However, this decree does not apply to the case at hand, in which video surveillance in police stations is carried out by the local police, and not by the regional police.

Taking into account this, the type of treatment that is carried out at the police station and what is expected to be carried out in the future, which is the subject of consultation, and the purposes to which compliance is sought, Decree 134/1999 does not result from application. It will be necessary to analyze the video surveillance system subject to consultation, taking into account the principles and guarantees established in the RGPD and the LOPDGDD, without prejudice to taking into account, where appropriate, the provisions of Instruction 1/2009, of February 10, of the Catalan Data Protection Agency, on the processing of personal data by means of cameras for video surveillance purposes, which remains in force.

#### IV

We will refer below to the first and third questions:

"1.- If they think it is correct, from the point of view of data protection, the proposal to install cameras that only record images for the purpose of labor control.

3.- If they think it is appropriate from the point of view of data protection that all video surveillance cameras can have two purposes, those of security of the facilities and that of labor control."

It must be agreed that this opinion is issued taking into account the information attached to the consultation, and without prior knowledge or having made a direct check of the police station's video surveillance system by this Authority.

As provided for in article 10 of Instruction 1/2009, prior to the implementation of a video surveillance system, a report must be prepared that must specify, among other issues, the justification of the legitimacy and proportionality of the treatment, the definition and technical characteristics of the video surveillance system, the planned security measures, etc.

Given that the said Report is not available, the considerations made in this opinion are indicative in nature.

In the matter of video surveillance, it is necessary to take into account, among others, the principles of integrity and confidentiality of the personal data that are the subject of treatment. According to article 5.1.f) of the RGPD, it is necessary to treat the data "in such a way as to guarantee an adequate security of personal data, including protection against unauthorized or illegal treatment and against its loss, destruction or damage accidental, through the application of appropriate technical or organizational measures ("integrity and confidentiality").

Paragraph 1 of article 35 of the RGPD establishes, in general terms, the obligation of those responsible for data processing (art. 4.7 RGPD) to carry out a data protection impact assessment (AIPD), prior to the implementation of such treatments, when it is likely that due to their nature, scope, context or purpose they entail a high risk for the rights and freedoms of natural persons, high risk

which, according to the RGPD itself, is increased when the treatments are carried out using "new technologies".

Section 3 of the same article 35 of the RGPD, establishes that the AIPD will be required, among others, in the event that a "systematic large-scale observation of a public access area" is carried out (art. 35.3.c) RGPD).

In the case at hand, the video surveillance that would be carried out in a local police station will probably neither quantitatively affect a very high number of people, nor would it involve the processing of a very high volume of personal information, nor would it affect to an extensive geographical area and, therefore, may raise doubts that it can be considered a "large-scale" treatment in the sense of article 35.3.c) of the RGPD.

However, without prejudice to this, the treatment of the images in the different spaces of the police station can affect, qualitatively, groups of vulnerable people, such as the people arrested, or, on the other hand, the community itself group of professionals who work at the police station, and it is also expected that the treatment will be indefinite.

As explained by the Working Group of Article 29 in the Document "Guidelines on the impact evaluation relative to data protection (EIPD) and to determine if the treatment "probably entails a high risk" for the purposes of Regulation (EU) 2016 /679.", the processing of data from vulnerable groups is one of the factors that can determine the need to carry out an AIPD.

Therefore, in the case we are dealing with, the person in charge must carry out an AIPD, prior to the start of the treatment.

We agree that, in the event that the AIPD incorporates the various aspects that must be incorporated in the Report provided for in article 10 of Instruction 1/2009, it will not be necessary to prepare said Report.

On this, we refer to the Practical Guide on the AIPD, of this Authority, available on the website [www.apd.cat](http://www.apd.cat).

Having said that, and having seen the first and third questions, it is necessary to refer in the first place to the video surveillance cameras which, according to the consultation, already exist in the police station for security purposes (Map 1).

Secondly, we will refer to the cameras that according to the consultation do not exist at the time of issuing this opinion (Map 2), and that could be installed in the future for labor control purposes and also, if applicable, for the purposes of security of facilities and people, according to the query.

Thirdly, we will refer to the possibility that the cameras already installed (Map 1) can also be used for labor control purposes.

For explanatory purposes, we will refer to these cases separately and in the order mentioned.

1.- Existing cameras as of 9/4/2019 in the local police building for security purposes (Map 1)

Map 1, which accompanies the consultation, refers to the system of video surveillance cameras that are installed on 9/4/2019, in different interior and exterior spaces of the police station, for security purposes, according to the consultation. Specifically, it identifies four cameras in interior spaces (camera 1: Garage-warehouse; camera 2:

Detainee room; camera 3: Armorer; camera 4: Reception-staircase access), and five cameras in exterior spaces (camera 5: Parking; camera 6: Left facade; camera 7: Main door; camera 8: Right facade; camera 9: Side alley).

According to the RGPD, the processing of personal data is only lawful if at least one of the conditions established in article 6.1 RGPD is met. Among others, the treatment will be lawful if it is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers by the person responsible for the treatment (art. 6.1 e) RGPD).

In connection with the legal basis for the aforementioned processing (art. 6.1.e) RGPD), article 22 of the LOPDGDD, has come to specify the terms in which the processing of data with video surveillance cameras can have legal authorization.

For the information available to the video surveillance system (Map 1), it responds to purposes related to public safety and the normal assurance of certain public services, in relation, specifically, to the powers that the regulations attribute to police forces local in relation to the custody, transfer and detention of persons.

As this Authority has decided on previous occasions (Decisions CNS 6/2014 or CNS 34/2015, among others, to which we refer), the installation of video surveillance cameras in cells, detention areas or 'searching police stations, requires a particularly careful prior exercise of weighting, since video surveillance in these spaces means a special impact on people's rights, specifically their privacy.

Due to the requirement of the principle of minimization, the data must be adequate, relevant and limited to what is necessary in relation to the purposes of the treatment (art. 5.1.b) RGPD). It is necessary that, especially in relation to "camera 2: Detention room" (Map 1), the City Council has carried out a weighting in relation to several factors, among others, the number and severity of detected incidents that have led to the installation of the camera, the percentage of arrests or searches of arrested persons that are problematic, etc., as well as the possibility of establishing less invasive control measures, so that the implementation, the duration of the recordings of images and the maintenance over time of these cameras is properly based on the protection of a higher legitimate interest and on the functions attributed to the local police force.

In this sense, in accordance with what is established in article 10 of the aforementioned Instruction 1/2009, in the report corresponding to this treatment the characteristics of the cameras should be specified and the implications they may have for to people's privacy.

For all this, the installation of cameras in different accesses to the police station, as well as in the interior spaces (Map 1), for security purposes and in accordance with the competences of the local police, may be lawful and have sufficient authorization, in the terms of article 6.1.e) RGPD and article 22 of the LOPDGDD.

This, as long as the rest of the principles and guarantees of the data protection regulations are complied with, in particular the principle of proportionality, the principle of integrity and confidentiality (art. 5.1.f) RGPD) and, very especially, to give prior and adequate information to the affected people.

Thus, special mention must be made of the need for the affected persons to receive sufficient information regarding the processing of their personal data through the information system that the police station already has. The processing of data through video surveillance systems must comply with the rest of the principles and guarantees

of the personal data protection regulations, among others, the duty to inform (arts. 12, 13 and 14 RGPD), in the terms provided for in article 22.4 of the LOPDGDD:

"4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 will be understood as fulfilled by placing an information device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person responsible and the possibility of exercising the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679.

A connection code or internet address to this information may also be included in the information device.

In any case, the data controller must keep the information referred to in the aforementioned regulation at the disposal of those affected."

Likewise, according to article 12 of Instruction 1/2009:

"12.1 The people responsible for the processing of images through fixed cameras must inform clearly and permanently about the existence of the cameras by placing the informational posters that are necessary to guarantee the knowledge of them by the people affected. This obligation is also enforceable when the captured images are not recorded.

12.2 Information boards must be put up before the start of image and voice recording, even if it is for tests, and can only be removed after the system has been taken down.

12.3 Information posters must be placed in clearly visible locations before entering the recording field of the cameras. The specific location of the posters will depend, in each case, on the nature and structure of the video-surveillance areas and spaces. However, the following conditions must be taken into account: For video surveillance cameras in buildings or facilities, an information poster must be placed at each of the accesses to the video monitored area. If they are divided by floors, in addition, another information poster must be placed on each of the floors that have video cameras, located in a main access space to the video-surveillance area or zone on the floor. (...)."

It will therefore be necessary to take into account the provisions of the Instruction in relation to the fulfillment of the duty to inform those affected.

v

2.- Non-existent cameras as of 9/4/2019 in the local police building (Map 2), for labor control purposes and, where applicable, for security purposes

Map 2 identifies seven cameras in interior spaces (ground floor: camera 10: Distributor lobby; camera 11: corporals office; camera 12: citizen attention office; and first floor: camera 13: Changing room entrance; camera 14: briefing room; camera 15 : Distributor lobby; camera 16: Police chief's office).

We analyze below the possibility that these cameras process personal data for the purposes of labor control.

As we have said, article 6.1.e) of the RGPD provides that the processing of data necessary for the fulfillment of a mission carried out in the public interest or in the exercise of the

public powers of the person in charge. In developing this legal basis that enables the treatment, we have already said that article 22 of the LOPDGDD specifies said authorization, in the case that concerns us. For the relevant purposes, section 8 of article 22 of the LOPDGDD, provides that the processing of images by the employer - in this case, the City Council - for labor control purposes, s must submit to the provisions of article 89 of the LOPDGDD, according to which:

"1. Employers may treat the images obtained through camera or video camera systems for the exercise of the control functions of workers or public employees provided for, respectively, in article 20.3 of the Workers' Statute and in the public service legislation, provided that these functions are exercised within their legal framework and with the inherent limits thereof. Employers will have to inform in advance, and in an express, clear and concise manner, the workers or public employees and, where appropriate, their representatives, about this measure.

In the event that the flagrant commission of an illegal act by the workers or public employees has been caught, the duty to inform will be understood to have been fulfilled when there was at least the device referred to in article 22.4 of this organic law.

2. In no case will the installation of sound recording or video surveillance systems be admitted in places intended for the rest or recreation of workers or public employees, such as changing rooms, toilets, dining rooms and similar.

3. The use of systems similar to those referred to in the previous sections for the recording of sounds in the workplace will only be admitted when the risks to the safety of the facilities, goods and people arising from the activity that is carried out are relevant the work center and always respecting the principle of proportionality, that of minimal intervention and the guarantees provided for in the previous sections. The suppression of the sounds preserved by these recording systems will be carried out in accordance with the provisions of section 3 of article 22 of this law."

According to article 20.3 of the Workers' Statute Law, approved by Royal Legislative Decree 2/2015, of October 23 (ET):

"3. The employer may adopt the surveillance and control measures he deems most appropriate to verify the employee's compliance with his obligations and labor duties, keeping in their adoption and application the consideration due to his dignity and taking into account, where appropriate, the real capacity of workers with disabilities."

It is worth noting that the thirteenth additional provision of the LOPDGDD adds a new article 20 bis to the ET, with the following content:

"Article 20 bis. Rights of workers to privacy in relation to the digital environment and disconnection.

Workers have the right to privacy in the use of digital devices made available by the employer, to digital disconnection and to privacy in the use of video surveillance and geolocation devices in the terms established in current protection legislation of personal data and guarantee of digital rights.»



In the same sense, the fourteenth final provision of the LOPDGDD, adds a new letter j bis) to article 14 of the revised text of the Law of the Basic Statute of the Public Worker (EBEP), approved by Royal Legislative Decree 5 /2015, of October 30, with the following words:

"Public employees have the following individual rights in accordance with the legal nature of their service relationship:

(...)

j bis) Privacy in the use of digital devices made available to you and against the use of video surveillance and geolocation devices, as well as digital disconnection in the terms established in current legislation on the protection of personal data and guarantee of digital rights."

These regulatory provisions have come to specify the legal authorization so that, within the framework of labor relations, the person responsible for the treatment, in this case, the City Council through the local police, can carry out a treatment of the images captured through video surveillance systems for labor control purposes, as long as workers' privacy is respected.

We cannot forget that, even in the workplace, workers must be able to have a certain expectation of privacy, as established, in the terms indicated, by the regulations (ET and EBEP) and as confirmed by jurisprudence. As an example, the STEDH of 28.11.2017, case Antovic and Mirovic c. Montenegro, explains that "the notion of private life can include professional activities or activities that take place in a public context and subject to observation (...)."

As repeated jurisprudence has shown (STEDH of 28.1.2003, or SSTC 37/1998, 98/2000, or 186/2000, and, more recently, STC 39/2016 -Bershka case-, among others) , and also in line with Instruction 1/2009, in order to check whether a restrictive measure of a fundamental right respects the principle of proportionality, it must meet three requirements: that it is capable of achieving the proposed objective ( suitability judgement); that it is necessary, in the sense that there is no other more moderate way to achieve this purpose with the same effectiveness (judgment of necessity); and, finally, that it is weighted or balanced, by deriving more benefits or advantages for the general interest than damage to other goods or values in conflict (proportionality judgment in the strict sense), that is to say, if the interference produced for said measure in the holder of the right object of restriction is the minimum to achieve the legitimate purpose intended with its adoption.

Thus, although in certain cases the jurisprudence considers admissible the installation of video surveillance systems in order to verify illegal conduct of which the employer may have previously suspected (among many other pronouncements, the aforementioned STC 39/2016, or the STEDH case Köpke v. Germany), the same courts warn that video surveillance in the workplace cannot mean disproportionate control of all workers. Thus, in the STEDH case López Ribalda and others v. Spain, of 9.1.2018, section 68, states:

"(...) in the present case and unlike Köpke, the covert video surveillance was not the result of a justified suspicion against the plaintiffs and, consequently, it was not directed specifically at them, but at all the personnel who worked in the cash registers, for weeks, without time limit and during all working hours. In Köpke, the surveillance measure was limited in time - it was carried out for two weeks - and only two employees were the target of the measure. In the present case, however, the decision to adopt measures of

surveillance was based on a general suspicion against all the staff in view of the irregularities that had previously been detected (...).”

Without prejudice to the particularities presented by each case analyzed by jurisprudence, the principle of minimization (art. 5.1.b) RGPD) and the judgment of proportionality require assessing whether it is possible to achieve the purpose pursued (in this case, the purpose of the control work at the police station) through less intrusive means in the intimate sphere of those affected with equal effectiveness, and if the use of video surveillance entails a greater benefit to the general interest than the harm that may eventually be caused to the affected

In this context, the consultation foresees that the processing of data for the purposes of labor control would be done with cameras "that only record images", from which it follows that it is not planned to carry out the recording of the voice. Voice recording is a treatment that can only be carried out exceptionally, given the principle of proportionality and minimal intervention (art. 89.3 LOPDGDD and, in the same sense, article 7.1 of Instruction 1/ 2009). Therefore, this forecast of the consultation is adjusted to the data protection regulations. The consultation also excludes the possibility of installing cameras in rest areas, changing rooms and dining rooms, an exclusion that is expressly provided for in article 89.2 of the LOPDGDD and article 7.3.a) of Instruction 1/2009 and, therefore, this query forecast is also positively evaluated.

It is also necessary to insist on the need to provide information to the affected persons about the processing of their data (art. 12 RGPD and art. 22.4 LOPDGDD), prior to the commissioning, if applicable, of certain video surveillance cameras provided on Map 2.

It should be remembered that, as provided for in article 89.1 of the LOPDGDD: "(...). Employers will have to inform in advance, and in an express, clear and concise manner, the workers or public employees and, where appropriate, their representatives, about this measure.”

Compliance with the principle of transparency by the person in charge (art. 4.7 RGPD) towards workers is particularly important in relation to the use of video surveillance systems, as the Article 29 Working Group highlights in the Opinion 2/2017, on data processing in the workplace.

Having said that, regarding the cameras on Map 2: camera 11: Corporals Office; camera 12: Office of public attention; camera 14: Briefing room; Camera 16: Office of the Chief of Police, it is appropriate to make the following assessment.

As the Article 29 Working Group has highlighted in its Opinion 2/2017, on the processing of data in the workplace:

"The systems that allow employers to control who can enter their facilities, and/or in certain areas of their facilities, can also allow the monitoring of workers' activities. Although these systems have existed for years, new technologies aimed at monitoring the use of time and the presence of workers are becoming more common, including those that deal with biometric data and others such as the tracking of mobile devices.

Although these systems can constitute an important component of the monitoring carried out by the employer, they also pose the risk of providing an invasive level of knowledge and control over the activities of the worker in the workplace.”

According to the same Opinion 2/2017: "(...) However, the continuous observation of the frequency and the exact times of entry and exit of the workers cannot be justified if these data are also used for other purposes, such as the evaluation of performance."

Video surveillance cameras that capture and record images of a specific workplace (such as those installed inside offices and similar spaces), involve continuous processing of the image of the worker or specific workers who occupy the position of physical work that is in the angle of view of the camera, which is not justified, for the purposes of the data protection regulations, and taking into account the intended purpose.

Taking this into account, given the information provided, the capture and recording of images through the video surveillance cameras inside the offices (cameras 11 and 16) or in spaces (briefing room and citizen attention office), in which the said professionals are during their working day regularly and continuously carrying out their tasks, on a continuous basis, could in fact allow a control of the behavior and even of the productivity and performance of the workers, which can be clearly disproportionate.

In this regard, Instruction 1/2009 states, in its article 7.3.b), that the use of video surveillance systems in the workplace with the sole purpose of controlling the performance of working people."

For all this, given the information available, the installation of cameras 11, 12, 14 and 16 of Map 2, for labor control purposes, would not be adjusted to the regulations and data protection principles.

Regarding the rest of the cameras on Map 2: camera 10: Vestibule-distributor; camera 13: Entrance dressing rooms; camera 15: Vestibule-distributor, these are cameras located, according to the information available, in traffic or passage spaces inside the police station.

From the perspective of the principle of minimization and minimal intervention, it is necessary to take into account the special nature of the space where it is planned to carry out video surveillance for the purposes of labor control. According to the consultation, in a certain period there would have been a situation in which the active officers of the local police force would have submitted their medical leave, "remaining the Police Station in operation with one or two administrators alone, putting themselves in danger to the safety of municipal workers and the facilities themselves."

Certainly, the verification of the presence of certain agents of the local police force in the premises of the police station (hourly control), is information that can allow to check whether he is in the police premises. The person in charge (the City Council, through the local police officers), must be able to carry out a control of time compliance by the workers, which is part of the labor control powers that the labor regulations (ET and EBEP ) recognizes the employer.

However, due to the information available, it cannot be ruled out that the time control of workers (the possibility of the person in charge to determine whether or not a worker is in police departments) can be carried out through systems less detrimental to the rights of those affected, and more effective in achieving the intended result, such as through registration systems of police station entries and exits.

The use of alternative time and attendance control systems to video surveillance, which we cannot rule out in the case at hand given the available information, would allow for a control of the presence of workers at the police station and, therefore, could be effective, without compromising the rights of those affected or making continuous and regular monitoring or control of the presence of a certain worker in one or another branch of the police station. In short, it seems clear that a monitoring of the workers in the terms indicated by the consultation (which would be continued over time and in different areas of the police station), may mean a disproportionate control of the workers, taking into account the data protection regulations and the jurisprudence mentioned.

For all this, given the information available, the installation of cameras 10, 13 and 15 of Map 2, for labor control purposes, also does not seem to be in line with the regulations and data protection principles, in the terms that raises the query, taking into account that this Authority is not aware that other types of time control and presence control mechanisms in police stations have been evaluated by the person in charge.

It should be noted that information will need to be given to those affected about the processing of their data, prior to the processing and in the terms required by article 89.1 of the LOPDGDD.

A different issue is that certain cameras on Map 2 can be used no longer for labor control purposes, but with the purpose of preserving the safety of police station staff or third parties, and of the facilities themselves (art. 22.1 LOPDGDD), that is, with the same purpose as the cameras already existing in the police station (Map 1).

In this sense, in the prior and necessary weighting that must be carried out by the person in charge, it should be assessed whether in certain areas of the police station referred to in Map 1, specifically, those corresponding to "camera 10: Lobby-distributor" - located at the entrance of the Citizen Service Office; and the "camera 12: Office for citizens", there may be a regular presence of people other than the workers and agents themselves (people who file a complaint, visitors, etc.), and if certain risk situations could occur.

Only if this were the case - a question that cannot be determined given the information available and that the person in charge will have to consider (art. 7 Instruction 1/2009) - could video surveillance at these points be relevant for security purposes.

On the other hand, with regard to the rest of the cameras on Map 2 (cameras 11, 13, 14, 15 and 16), given the information available and taking into account, in addition to what has already been explained, that it is 'spaces in which there would not be the usual presence of people outside the police station, it does not seem to be in line with data protection regulations that the processing of images with these cameras can be used for security purposes.

## VI

### 3.- Use of the existing cameras on 9/4/2019 in the local police building (Map 1) for labor control purposes

The consultation also asks about the possibility that the cameras that are already installed for security purposes (Map 1) can also be used for labor control purposes.

At the outset, it is appropriate to extend the considerations made regarding the need to apply the principle of minimization and minimal intervention, as well as the proportionality test and the obligation to adequately inform workers, in relation to the possibility of use, where appropriate, the cameras on Map 1 for labor control purposes.

In certain cases, it is possible that the images recorded by video surveillance cameras for security purposes may have occupational repercussions for one or more workers. In relation to certain cameras on Map 1, in the terms we will see, it could be considered lawful that, without ceasing to have a main purpose of security, the recorded images could be treated, if appropriate, in relation to the employment situation of a employee. Thus, rather than considering that these cameras have, properly, a purpose of labor control, we can understand that the images captured for security purposes can be relevant or have probative value in relation to the work situation of a worker.

For example, it should be borne in mind that in a police station, labor control may make it necessary to check the entry and exit times of certain officers from the police station itself, as this may allow to confirm whether a certain officer is providing the service that has been assigned to him, either in his own premises or elsewhere (for example, to be found driving in a police vehicle of the force).

Taking this into account, we cannot rule out that the images recorded by "camera 1: Warehouse garage", if this is the space where the police vehicles are located (a question that is unknown due to the available information) and, for the same reason, the images from "camera 5: Parking", although they respond to a security purpose, could be relevant and have occupational repercussions for a certain agent (for example, because he is not driving the vehicle when he should).

In this case, it could be lawful to consider that the processing of the data may also respond to a purpose of labor control, in the terms indicated.

Beyond that, in relation to cameras 6, 7, 8 and 9 on Map 1 (exterior cameras which, according to the information available, capture images of the different accesses to the building), in principle, and taking into account the indicated possibility of having other mechanisms for controlling the hours and presence of police station workers less invasive for the privacy of those affected, and more effective in achieving the intended result, it does not seem that, from the information provided, the treatment of the images captured by these cameras, referring to different access points to the police station, must be used for labor control purposes. We extend this consideration to camera 5, in case it is a parking space for all types of vehicles, not just

With regard to "room 4: Reception access - staircase", according to the information available, in this space it is foreseeable that one or more certain workers will be present throughout the working day. Taking this into account, and given the information we have, the consideration could be extended that a treatment of the image of the workers who provide service at the reception, in a stable and continuous manner, for the purposes of labor control, would in principle result disproportionate. In any case, it is not clear, from the information available, if the images recorded by this camera can be relevant for the purposes of labor control, so it cannot be determined if it could be relevant, in this case, the treatment for purposes of labor

With regard to "camera 2: Detention room", as this Authority has done in Opinions CNS 6/2014 or CNS 34/2015, cited, the video surveillance inside the cells of the police stations, obliges to make a particularly rigorous proportionality examination. For these purposes, the principle of proportionality and minimal intervention makes it necessary, specifically, to ensure that there will be no illegitimate or disproportionate inter

in the rights of those affected, in particular, the rights of article 18.1 of the Constitution (right to honor, privacy and self-image).

In the case we are dealing with, camera 2 allows video surveillance in the "detainee room" of the police station, therefore, even though this room does not have the characteristics of a cell and the length of stay of the detained may be shorter, some of the considerations made in the Opinions cited are also extrapolable.

According to article 7.3 of Instruction 1/2009:

"a) (...). In the case of detention cells for detained persons or of penitentiary centers or similar spaces of seclusion, the installation is not proportionate, unless there is a superior legitimate interest that justifies it."

In any case, in the detention room there could be situations of risk arising from the contact between the detainee himself and other people - the agents, mainly - at the specific moments in which this contact can occur (admission and stay for a time determined in the detention room, transfers or exit from the same). Thus, in certain cases, video surveillance within this space can be justified, although limited, by the principle of proportionality, to the moments when the detained person is accompanied, in order to ensure the safety of the detained person or of the people who come into contact with it.

From the perspective of the purpose principle (art. 5.1.b) RGPD), it must be taken into account that a possible disciplinary infraction committed by a police officer - if it were the case - may be related to the way in which he has served or interacted with the arrested person.

In these temporary lapses in which there is contact between the professionals and the detained person, it could be considered that the processing of the images for security purposes may have occupational repercussions regarding the agents who come into contact with the detained person (for for example, in relation to disciplinary offenses related to allegations of abuse, where images may have probative value).

In this sense, rather than consider, given the nature and characteristics of a detention room, that the camera of the detention room should carry out a treatment for the purposes of labor control (which may be more typical of other physical spaces ), we can consider it lawful that, in specific cases, the images recorded for security purposes may have repercussions and, where appropriate, probative value, regarding the employment situation of a police officer.

From this perspective, it may be justifiable to proceed with video surveillance inside the detention room (camera 2 on Map 1), mainly at those times when contact with other people is to occur, since there could be conflict situations that would justify the recording of the images and their conservation, for evidence purposes. The principle of minimum intervention (article 7.1 of the Instruction) obliges the person in charge to consider what time frames for capturing and recording images may be appropriate, given the circumstances of each case.

Finally, with regard to "camera 3: Armorer", also from the perspective of the purpose principle (art. 5.1.b) RGPD), it should be taken into account that, unlike other areas of a police station, the access, entry and exit of the armorer can constitute relevant evidence not only for security issues (which, as has been said, is a purpose that justifies the processing of images with this camera), but also for specific issues of labor control.

Thus, the images captured at the entrances to the police station's armory may be relevant to a potential disciplinary offense committed by a police officer and, therefore, be relevant for evidentiary purposes in relation to this disciplinary offence.

Taking this into account, the treatment of images from "camera 3: Armer" could have a purpose of labor control, apart from the already foreseen purpose of security.

In any case, if the data processing carried out with any camera that is already in operation for security purposes (Map 1), it must also be used for labor control purposes, given that this new processing does not would be what was initially planned (treatment for security reasons), it will be necessary to inform not only of the security purpose, in accordance with what is established in article 22 of the LOPDGDD, but also clearly and in advance to the workers and their representatives of the fact that certain cameras of the police station already installed can be used for the purposes of labor control of workers, in the terms required by article 89.1 of the LOPDGDD.

## VII

Below we refer to the second question asked: "2.- How do you think the viewing of the cameras should be done for the purpose of labor control, given that the control of the video surveillance cameras is carried out by the Local Police."

The question asked, relating to the display and access to the treaties, is a question that affects the confidentiality of the personal data that is the subject of treatment.

Therefore, it is necessary to bear in mind that it is necessary to adopt the appropriate technical and organizational measures to guarantee compliance with the regulations and protect the rights of the interested parties, in the terms provided for in the RGD.

The RGD does not establish any list based on the basic, medium and high levels of security, as provided for in the Deployment Regulation of the previous Organic Law 15/1999, on data protection, but is based on a prior analysis of the risks, that it is necessary to determine which security measures will be implemented.

As noted, from an information security point of view, a risk analysis requires identifying threats (for example, unauthorized access to personal data), assessing how likely this is to occur, and the impact it would have on the people affected. The type of risk and, in short, its probability and severity, varies according to the types of treatment, the nature of the data being treated, the number of people affected, the amount and variety of treatments, the technologies used, etc.

Having said that, for the purposes of the question posed, regarding viewing and, ultimately, access to the images that are captured and recorded through the police station's video surveillance cameras, the principle of minimization must necessarily be applied, as it follows from the data protection regulations and how it is done in accordance, specifically, in article 7.1 of Instruction 1/2009:

"(...) This same principle of minimal intervention must also be applied to the selection of the technology used, the time frames of recording and the determination of the conditions of conservation and access to the images."

Having said that, a distinction should be made in relation to the display of recorded images, depending on the intended purpose.

Thus, in relation to the cameras that must be used for a security purpose, it can be considered, apart from recording the images, that the person or persons who have

assigned the function of monitoring the facilities, it must be able to view the recorded images in real time, in order to detect, if this is the case, any problem that could affect security.

On the other hand, when the purpose of labor control is involved, it does not appear that this purpose requires continuous viewing of the recorded images. In principle, only in those cases in which it is necessary to check whether a worker has fulfilled his duties, that the person or persons who have been assigned duties in personnel matters, it seems that it should be possible to view the recorded images.

In any case, viewing the images captured by the police station's video surveillance cameras, whether those are already in operation or those that could be installed in the future, and whether the purpose that justifies the treatment is a purpose of safety or labor control, or both, must correspond, only, to those persons who have been assigned the corresponding functions in each case in relation to the fulfillment of these purposes (hierarchical superiors of the workers, professionals who have been assigned functions in personnel matter, personnel in charge of monitoring the facilities, etc.).

## VIII

Finally, we refer to the fourth question asked: "What do you think should be the retention period of the camera images for the purpose of labor control."

As has been said, the principle of limiting the data retention period (art. 4.1.e) RGPD) obliges not to keep or keep personal data beyond what is required by the purpose of the treatment.

Thus, in relation to video surveillance treatments, article 22.3 of the LOPDGDD provides the following:

"The data will be deleted within a maximum period of one month from its collection, except when it must be kept to prove the commission of acts that threaten the integrity of persons, property or facilities. In such a case, the images must be made available to the competent authority within a maximum period of seventy-two hours from the time the existence of the recording was known.

The blocking obligation provided for in article 32 of this organic law will not apply to these treatments."

Although, by application of article 22.3 of the LOPDGDD, the person in charge would not be obliged to block the recorded images once the deadline has passed, the possibility that the blocking is pertinent, in certain cases, should not be excluded as long as they have not prescribed the concurrent responsibilities, related to the images. In this regard, it should be borne in mind that, according to article 8 of Instruction 1/2009:

"8.2 The cancellation occurs without prejudice to the blocking, according to which the images can be kept at the disposal of public administrations, courts and tribunals to attend to the possible responsibilities arising from the treatment during the limitation period of these responsibilities .

8.3 Blocking means that the images, and where applicable, the voices, remain outside the usual operating circuits and that custody is established through a system that allows the control and recording of the accesses that occur, with the aim of to which the previous section refers. (...)."



We note that article 22.3 of the LOPDGDD provides for a retention period of one month as a maximum period, which does not necessarily have to be exhausted. Therefore, by application of the minimization principle, the images must be deleted as soon as possible and, if applicable, before the end of the one-month period, if there are no circumstances that justify their conservation.

Therefore, this period of one month, provided for in the regulations, is the maximum that will have to be applied, in relation to the conservation of the images captured by the video surveillance system for the purposes of labor control referred to in the query.

In accordance with the considerations made in this opinion the following are made,

## Conclusions

### Questions 1 and 3:

#### 1.- Existing cameras as of 9/4/2019 in the local police building for security purposes (Map 1)

The installation of cameras in different accesses to the police station, as well as in the interior spaces (Map 1), for security purposes and in accordance with the powers of the local police, may be lawful and have sufficient authorization, in the terms of article 6.1.e) RGPD and article 22 of the LOPDGDD, as long as the principles and guarantees of data protection are complied with.

#### 2.- Non-existent cameras as of 9/4/2019 in the local police building (Map 2), for labor control purposes and, where applicable, for security purposes

Given the information available, video surveillance with cameras 11, 12, 14 and 16, for labor control purposes, would not be adjusted to the regulations and data protection principles.

The video surveillance with cameras 10, 13 and 15, for the purposes of labor control, would also not be adjusted to the regulations and the principles of data protection in the terms raised by the query, taking into account that this Authority is not aware that other types of time control mechanisms and presence in police stations have been evaluated by the person in charge, less harmful to the rights of those affected and more effective in achieving the intended result.

Only in the case of cameras 10 and 12, the prior weighting must determine whether the processing of the images can be relevant for a security purpose.

#### 3.- Use of the existing cameras on 9/4/2019 in the local police building (Map 1), for labor control purposes

The processing of camera 2 and camera 3 data may have an impact on the employment situation of the workers and may be lawful for the purposes of labor control, provided that the workers and their representatives are adequately informed (art. 89.1 LOPDGDD) .

Given the available information, the same consideration cannot be ruled out in relation to camera 1 and camera 5, in the event that there are police vehicles in these areas.

**Question 2: Viewing and access to the images captured by the police station's video surveillance cameras must correspond, only, to those people who have assigned functions in relation to the fulfillment of security or labor control purposes.**

**Question 4: The retention period for images processed for security and labor control purposes must be only what is necessary to achieve the purpose pursued, without in any case exceeding the period of one month (article 22.3 LOPDGDD) .**

**Barcelona, June 12, 2019**

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