

CNS 8/2020

Opinion in relation to a city council's consultation on a councillor's access to video surveillance images captured for public safety purposes

A letter from a city council is presented to the Catalan Data Protection Authority, in which it is considered whether a councilor of the council can view the images captured by a video surveillance camera installed for reasons of public security, in which it could see a person hanging a star-spangled flag from the pole of a roundabout in the municipality.

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

As this Authority has done on previous occasions (among others, reports IAI 56/2019, IAI 52/2019, IAI 48/2019 or IAI 46/2019, which can be consulted on the website <http://apdcat.gencat.cat>), the local regime legislation recognizes a right of access to all elected officials, regardless of whether they are in the government team or in the opposition, to the information available to their local corporation and that can be necessary for the exercise of the functions that correspond to them.

Thus, article 77.1 of Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL) establishes that "all members of local corporations have the right to obtain from the Mayor or President or from the Comisión de Gobierno any antecedents, data or information open in the power of the services of the Corporation and are necessary for the development of its function".

In the same sense, the revised Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28 (TRLMRLC), provides, in its article 164.1, that "all members of local corporations have the right to obtain (...) all the background, data or information that is in the possession of the corporation's services and is necessary for the development of its function."

The right to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and necessary for the exercise of their functions, in accordance with repeated jurisprudence on this issue (SSTS September 27, 2002, June 15, 2009, among others), is part of the fundamental right to political participation enshrined in article 23.1 of the Spanish Constitution, according to which "citizens have the right to participate in public affairs, directly or through representatives, freely elected in periodic elections by universal suffrage."

It should be borne in mind that the elected officials participate in a public action that manifests itself in a wide range of specific matters, such as the right to audit the actions of the corporation, the control, analysis, study and information of the necessary antecedents that they have

services of the City Council, for its control task and to document itself for the purposes of adopting decisions in the future (among others, STS of March 29, 2006).

However, as this Authority has already recalled on several occasions, the exercise of this right of access to municipal information is in any case subject to certain conditions provided for in the TRLMRLC, cited, and in the Organization Regulations, operation and legal regime of local entities (ROF), approved by Royal Decree 2568/1986, of November 28, without prejudice to what may be established by the regulation of organization and operation of each local entity.

Article 164.2 of the TRLMRLC provides in which cases the corporation's services must provide information directly to the elected members. Outside the cases of direct access to information or documentation, article 164.3 of the TRLMRLC provides that:

"In the other cases, the request for information is understood as accepted by administrative silence if a negative resolution is not issued within four days from the date of presentation of the request. In any case, the negative resolution must be motivated, and can only be based on the following assumptions:

- a) When the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's own image.
- b) When it comes to matters affected by the general legislation on official secrets or for summary secrecy."

Access requests may be denied when any of the circumstances provided for in sections a) or) occur, but access may also be denied, given the nature of the right to data protection (STC 292/2000), when there are other specific circumstances related to personal data that justify it, in particular under the principle of data minimization, according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated" (Article 5.1.c) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection Regulation (hereinafter, RGPD)).

This principle implies, on the one hand, that access to municipal information that includes certain personal data, without the consent of those affected, must necessarily be linked to the exercise of the functions that correspond in each case to the councilor what it is about, in the terms provided for in the local regime legislation.

On the other hand, it involves a weighting exercise, in order to assess the implications that, in each case, the exercise of the councilors' right of access to information may have for the rights of the people affected, such as the right to the protection of personal data (Article 18.4 EC).

It is therefore necessary to examine the circumstances and terms of the request submitted by the councilor to the City Council, the intended purpose, the possible affected persons and, especially, whether there is personal data and whether this information is necessary to achieve said purpose or requires special protection.

III

According to the statements made by the City Council in the consultation, the images for which the councilor has requested access (viewed) have been captured and kept by the local police of the municipality for the purposes of public safety.

The City Council points out that in these images a person, unrelated to the council, is seen hanging a star-spangled flag from the pole of a roundabout owned by the municipality, which has not been

no damage occurred and that the flag in question was hoisted by someone also outside the council.

In view of these manifestations, it can be said that we are faced with access to images captured by a video surveillance system for public security purposes.

Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereafter, LOPDGDD), regulates in its article 22 the video surveillance treatments carried out by a person in charge, whether a person physical or legal, public or private, with the purpose of preserving the safety of people and property, as well as their facilities.

In relation, specifically, to the treatment of personal data from the images and sounds obtained through the use of video surveillance systems by the security forces and bodies, context in which we find ourselves, it provides that "it will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment has the purpose of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, including the protection and prevention of security threats public (...)" (section 6).

The aforementioned Directive (EU) 2016/680 has not yet been transposed into the Spanish legal system. However, in this area Organic Law 4/1997, of August 4, which regulates the use of video cameras by Citizen Security Forces and Bodies in public places (hereinafter, LOVFCS) will continue to apply, and the regulations that deploy it.

This, without prejudice to the fact that, with respect to those issues that are not specifically regulated in these regulations, the RGPD and the LOPDGDD are applicable, in accordance with the reference made by article 2.2 of this Organic Law.

Therefore, it must be borne in mind, for the purposes that are relevant, that the communication or access to the images captured by these types of video surveillance systems for public safety purposes is governed by what is provided for in said specific regulations.

IV

According to the aforementioned LOVFCS, the installation of video cameras in public places, both fixed and mobile, corresponds exclusively to the security forces and bodies, and responds to a specific security purpose such as that of "contributing to ensure citizen coexistence, the eradication of violence and the peaceful use of public roads and spaces, as well as preventing the commission of crimes, misdemeanors and infractions related to public security" (article 1.1).

Article 8 of the LOVFCS regulates the conservation of the recordings made by these video surveillance systems in the following terms:

- "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. Any person who, by reason of the exercise of his functions, has access to the recordings must observe the due reserve, confidentiality and secrecy in relation to them, being applicable, otherwise, the provisions in article 10 of this Law .
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. (...)."

Decree 134/1999, of 18 May, regulating video surveillance by the police of the Generalitat and the local police of Catalonia, in terms similar to those of the LOVFCS, provides (article 14.4) that:

"14.4 The original media of the recordings and their copies, if applicable, may not be transferred to third parties, including other administrative services and public entities, nor examined or consulted by anyone, except in the cases provided for in this Decree."

Article 16 of this Decree 134/1999, in line with what is established in article 7 of the LOVFCS, establishes that:

"(...)

16.2 The person responsible for the custody of the recordings will deliver them to the judicial authority competent immediately, and in any case within a maximum period of seventy-two hours from the time of the recording, the original supports of the recordings where images or sounds have been captured that may be prosecuted criminally or that may result relevant to open criminal court proceedings.

16.3 It will also deliver to the competent administrative authority, immediately, and in any case within a maximum period of seventy-two hours, the original media of the recordings where images or sounds that may constitute an infringement have been captured serious or very serious public security administrative offense or that may be relevant to open administrative sanctioning procedures in this area or to ongoing police investigations. (...)"

It follows from these precepts that the access or communication of the images recorded by the forces and security bodies (such as, in the present case, by the local police of the municipality) remains prohibited, unless these images are related to infractions 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 turn, it follows that access to said images remains in any case reserved to the competent judicial or administrative authority, without prejudice to the fact that police forces and bodies, within the framework of a specific investigation, may also have access access

And, for the purposes of interest, it also follows that, having produced the capture of facts that could be constitutive of criminal offenses or administrative infractions, it would correspond to the police forces and bodies responsible for the capture (in this case, to the Local Police of the municipality) make the recording of these images available to the competent judicial or administrative authority.

In view of this, the request for access to said images by the councilor should be linked in the present case to the exercise of the functions of inspection and control of the municipal action attributed to him by the regime legislation local

At this point, it should be remembered that, although this regulation does not require the elected officials that, in order to access the information held by the corporation, they must explain or substantiate the purpose of their request, given that the reason for the their request must be understood as implicit in the exercise of the functions that correspond to them as elected officials, in the terms provided for in said local regime legislation, this Authority maintains that it may be convenient for councilors, when making the request for access to information that contains personal data, specify the purpose for which they are requesting this access and/or the terms of their request.

Especially for those cases in which the information requested may contain special categories of data (Article 9 RGPD), data regarding which, despite not being included in this category, the transparency legislation establishes a special protection (those relating to administrative or criminal offences), or data deserving of a special reserve or confidentiality due to the concurrence of certain qualified circumstances (for example, situations of social vulnerability, data of minors, data related to gender violence, the possibility of drawing up socio-economic profiles, etc.).

The intended objective is to prevent excessive or irrelevant personal data from being communicated to councilors to achieve the intended purpose of access, which must necessarily be linked to the performance of the functions that correspond to them as elected officials

It must be taken into consideration that in the present case the councilor's access request would affect data relating to criminal or administrative offenses linked to public security, for which the transparency legislation establishes a specific protection regime.

This circumstance could act as a limit to the councilor's right of access to the controversial images, in the event that the relevance of this information for the exercise of the functions attributed to him as an elected office is not sufficiently proven.

The consultation is not accompanied by the request for access made by the councillor. It is understood that this councilor, in said request, "does not expressly state why he needs to view these images, but it is understood that it is for a control task and to be able to ask for possible responsibilities if appropriate".

Bearing in mind that, as we have seen, it is up to the police forces and bodies to bring to the attention of the competent judicial or administrative bodies the capture of those facts that may constitute a criminal offense or an administrative infraction in the field of public safety, the requirement of possible responsibilities mentioned - and which could motivate the councilor's request for access - should be understood as referring in any case to municipal action

It can, therefore, be thought that the councilor's request could be related in this case to the control of the management carried out by the council when it is aware of the facts described in the consultation, with the ultimate aim of verifying that no irregularity has occurred.

In order to carry out the aforementioned control over municipal action, it seems clear that the councilor should be able to have certain information linked to the management of this specific problem by the council.

In this sense, you could be given information about what actions the competent body has taken in this regard and/or about the circumstances that, based on the information available, seem to have motivated the decision not to demand possible responsibilities from the person involved in these events.

Beyond that, taking into account the strict regime of access to images captured by video surveillance systems for public security purposes and the lack of specific information about the need to view said images, which refer to the possible commission of criminal or administrative offences, from the point of view of data protection, it does not seem that the councilor's access to the controversial images for the exercise of the functions of supervision and control of the administration is justified municipal

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

Conclusions

Based on the information available, in the present case the access of a councilor to the images captured by the public security video surveillance system installed in the municipality would not be justified, since the need to have this information for the exercise of its functions of control of the municipal action.

Barcelona, March 11, 2020

Machine Translated