

CNS 38/2020

Opinion in relation to the consultation made by a City Council on the installation of surveillance cameras in the municipal swimming pool, the municipal sports center and the Castle

A letter from a City Council is presented to the Catalan Data Protection Authority, in which it is requested that the Authority issue an opinion on the possibility of installing cameras in various facilities in the municipality, specifically, in facilities of the municipal swimming pool, the municipal sports center and the Castle.

Specifically, the consultation shows that a significant increase in acts of vandalism has been detected in these facilities, and it is added that the facilities mentioned are regularly visited by minors. The consultation explains that the municipality does not have Local Police, *"but it would be convenient if these images met the appropriate parameters to be validated as evidence in the event of a complaint or initiation of disciplinary proceedings, if applicable."*

The consultation requests information on the procedure to be followed, in relation to the installation of video surveillance in the indicated facilities, to ensure the good maintenance of the municipal heritage and, at the same time, to comply with the data protection regulations.

After analyzing the consultation, which is accompanied by the legal report of the Catalan Association of Municipalities that the City Council would have requested, and in accordance with the report of the Legal Counsel, the following is ruled:

I

(...)

II

Based on the query in the terms described in the Background, with regard to the regulatory framework applicable to video surveillance, it is necessary to refer to Regulation (EU) 2016/679, of April 27, general of data protection (RGPD), according to which personal data is *"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).*

The treatment of personal data, in particular, the image of natural persons through video surveillance systems is subject to the principles and guarantees of the regulations for the protection of personal data, i.e. the RGPD and Organic Law 3 /2018, of December 5, of protection of personal data and guarantee of digital rights (LOPDGDD)) and, specifically, Instruction 1/2009, of February 10, of the Catalan Data Protection Agency, on the processing of personal data using cameras for of video surveillance.

According to the consultation, the possibility of installing video surveillance cameras in the aforementioned premises (facilities of the municipal swimming pool, the municipal sports center and the Castle) responds to the significant increase in acts of vandalism in these facilities. Therefore, it seems to be deduced that the purpose for which the City Council would like to install cameras is part of a security purpose for the facilities and the people who go there.

The LOPDGDD, in its article 22, regulates video surveillance treatments carried out by a person in charge, whether a natural or legal person, public or private, with the purpose of preserving the safety of people and property, as well as its facilities.

"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

(...)

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, 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 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.

(...)."

The purposes referred to in the aforementioned Instruction 1/2009 are "surveillance or control in buildings, facilities, vehicles or other public or private spaces, for reasons of public or private security, traffic control, labor control, ensuring the normal operation of certain public services, control of people's habits, behavior or state or for other similar reasons" (art. 2.e).

Therefore, ruling out that in most cases the consent of the affected persons can be counted on, it is necessary to have a sufficient legal basis that enables the data processing for video surveillance purposes.

In this regard, it must be said that, when it comes to public administrations (as in the case examined), the capture of images and, where appropriate, sounds can be authorized in article 6.1.e) of the RGPD, according to which, the treatment of personal data can be lawful, if *"the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person responsible for the treatment;"*.

In view of the information available (the query refers to the significant increase in acts of vandalism in the indicated facilities), the purpose pursued with the use of the video surveillance systems that the City Council would like to install in said locations could correspond to *"the purpose of preserving the security of people and goods, as well as their facilities"*, to which article 22.1 of the LOPDGDD refers.

a) With regard to the **sports facilities** referred to in the query, it seems clear from the information available that the purpose of the treatment would be to guarantee the security of the premises themselves and, where appropriate, of their accesses. In principle, it seems that these would be sports grounds with some type of access limitation (in terms of hours and conditions of access, etc.). If we adhere to the provisions mentioned in article 22 of the LOPDGDD, it seems clear that the City Council would have the authority to carry out the processing of the images (video surveillance), as long as it refers to the facilities themselves and that, if applicable, the cameras that can be installed to control access to these sports facilities only capture the essential minimum of the public road to control said access (eg art. 22.2 LOPDGDD).

In this case, the processing of data (images captured through video surveillance cameras) for which the City Council would be responsible (art. 4.7 RGPD), will be subject to data protection regulations (RGPD and LOPDGDD) and, if where applicable, to what is provided for in Instruction 1/2009.

b) Regarding the **Castle**, in the event that video surveillance for security purposes refers, in the terms of article 22 of the LOPDGDD, to the security of the Castle building itself and, where appropriate, its accesses, the personal data protection regulations would also be applicable to this treatment.

In any case, the legitimacy granted by the data protection regulations for the use of video surveillance systems should be limited to the protection of the Castle building itself and its accesses, given that, as pointed out in the consultation, otherwise, the capture of images on the "public road" corresponds, as a general rule, to the security forces and bodies, in accordance with the applicable specific regulations.

On this, as the consultation mentions, this Authority has pointed out, in the CNS Opinion 27/2015 (Legal Basis V) that:

"In relation to the concept of "public place", the aforementioned LO 4/1997 foresees a broad conception of the concept, that is any public space whether open or closed. This concept has traditionally been understood to refer to those places in the public domain that are intended for general use (eg a road, a beach or a park). However, the concept "public place" tends to prevail today to more commonly designate the places that the public usually frequents, regardless of their ownership. Thus, they are also considered places

public other private spaces open to the public (such as commercial areas). It seems, therefore, that, for the purposes of establishing the scope that must be given to the concept of "public place", the elements of accessibility and the use that citizens make of this space acquire greater relevance in the face of legal nature of the asset (among others, SAN of May 20, 2011).

It is not superfluous to point out, at this point, that the various municipal ordinances regulating public places or spaces - to, among other things, guarantee citizen coexistence - tend to define these spaces as streets, thoroughfares, squares, avenues, passages, parks, gardens and other spaces or green or forest areas, bridges, tunnels and underpasses, car parks, fountains and ponds, public buildings and other spaces intended for municipal use or public service (...). "

Therefore, in the event that the video surveillance of the Castle had to cover not only the building itself and, where appropriate, its accesses, in the terms of article 22 of the LOPDGDD, but also the public road (roads or access streets, parks or a comparable geographical space wider than the Castle itself and its accesses), this could mean processing images of people who not only access the Castle but also circulate on public roads or stay in the surroundings of the Castle, without any access limitation.

If this were the case, the capture and recording of images would be subject to the regulatory regime of video surveillance by security forces and bodies (Organic Law 4/1997, and development regulations).

In the case at hand, the City Council states that it does not have local police. Therefore, if, apart from the images of the castle itself, it was intended to capture other public spaces such as those mentioned, it would not be possible to capture images in these spaces based on the provisions of Organic Law 4/1997 and the rules deployment

However, as has been pointed out, it seems that the query refers to the establishment of video surveillance of the Castle building itself, so the applicable regime would be that provided for in the regulations for the protection of personal data (RGPD and art. 22 LOPDGDD).

It is also necessary to take into account the provisions of the LSP in relation to the use of private video surveillance systems. Article 42 of this Law, to which we refer, establishes an exceptional case to the aforementioned general rule prohibiting the capture and recording of images on public roads and in public spaces by entities other than the forces and bodies of security.

For all that has been said, and given the information available, the City Council could have a sufficient legal basis to carry out the processing of images through video surveillance cameras, given the provisions of article 6.1.e) of the RGPD, in connection with article 22 of the LOPDGDD, if it is done under the terms of sections 1 and 2 of this article.

Therefore, in these terms, the City Council could carry out the processing of images through video surveillance cameras in the facilities referred to in the query, which will be subject to the principles and obligations of the regulations of data protection and, in particular, the corresponding procedure, which we refer to below.

III

The query refers to the procedure and the conditions to be followed in order to be able to install video surveillance cameras in the buildings or facilities referred to (the Castle and municipal sports facilities).

The establishment of a video surveillance system does not have a specific procedure established for its creation. In any case, it is up to the City Council to approve it and determine its characteristics, in accordance with the principles of data protection by design and data protection by default (art. 25 GDPR).

In any case, in order to consider the video surveillance system appropriate to the data protection regulations, it will be necessary to comply with the principles and obligations established in the data protection regulations (RGPD and LOPDGDD) and, where appropriate, specified in the Instruction 1/2009. We make special reference to the following obligations:

- Preparation of the Report

In accordance with article 10 of Instruction 1/2009, prior to the implementation of a video surveillance system, a report must be drawn up 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.

Therefore, the City Council should prepare the corresponding Report, in the terms described in article 10 of the Instruction. Given the information available, it is necessary to emphasize the need for the City Council to clarify, prior to the implementation of the video surveillance system, issues related to the location and field of view of the cameras. In particular, when it comes to cameras outside, it must be stated whether within a radius of 50 meters there are health centers, religious centers, places of worship or headquarters of political parties or educational centers attended by minors. It is also necessary to refer to the spaces that enter the field of vision of the cameras (art. 10.1.e)

Instruction). Likewise, it will be necessary to define the characteristics of the system and specify, among others, the total number of cameras that make up the system, the technical conditions of the cameras, or if continuous or discontinuous recording of the images is foreseen (art. 10.1.f) Instruction).

In any case, we agree that in the event that an AIPD is to be made to which we refer below, and to the extent that it incorporates the different aspects that must be incorporated in the Report provided for in article 10 of the Instruction 1/2009, it would not be necessary to prepare said Report.

- Impact assessment related to data protection

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), with a character prior to the start of the treatment, when it is likely that due to their nature, scope, context or purposes they entail a high risk for the rights and freedoms of natural persons, a 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 in several cases, among others, in the event that an "observation" is carried out

large-scale systematic of a public access area" (art. 35.3.c) RGPD), when large-scale video surveillance systems are used.

It is worth saying that the video surveillance that would be carried out in the case at hand could not quantitatively affect a very large number of people, nor would it affect a large geographical area of the municipality but specific facilities and, therefore, could raise doubts that may be considered a "large-scale" treatment in the sense of article 35.3.c) of the RGPD.

However, the Article 29 Working Group (WG 29) in its document *"Guidelines on Data Protection Delegates (DPD)"*, recommends (section 2.1.3), that a series of factors when determining whether a treatment is large-scale, among which, the number of affected, either as a specific figure or as a proportion of the population (in the case at hand, population of the municipality), as well as the duration or permanence of the data processing activity.

These factors, also according to the Practical Guide on the AIPD, of this Authority, available on the website www.apdcat.cat, they must be taken into account when determining whether a data processing involves large-scale processing.

Thus, the City Council should take into account the proportion of residents of the municipality who may be affected, as well as the forecast that the video surveillance system will be long-lasting or even permanent over time, to consider the implementation of the 'AIPD'.

In any case, the concurrence of some of the criteria established in article 28 of the LOPDGDD or those contained in the Article 29 Working Group Document (also approved by the CEPD) *"Guidelines on the data protection impact assessment (EIPD) and to determine if the treatment 'probably entails a high risk' for the purposes of Regulation (EU) 2016/679."*, can justify the need to make an AIPD.

Mention that the processing of data from vulnerable groups, including minors, is one of the factors that can determine the need to carry out an AIPD. The aforementioned Guide of this Authority takes into account, among the vulnerable groups, minors and the elderly. The consultation points out that the facilities subject to consultation are regularly visited by minors, who need special protection in the processing of their data, because they may not be aware of the risks involved, as explained in the Practical Guide on the AIPD of this Authority. Likewise, in the case that, for example, the City Council

detect that the sports facilities in question are used by other vulnerable groups (such as people who do rehabilitation through sport, people with special needs, etc.), this should also be a factor to take into account when determining the advisability of performing an AIPD.

On this, we refer to the Practical Guide on the AIPD, of this Authority, available on the website www.apdcat.cat.

In any case, if after having carried out the AIPD it results in a high-risk situation that has not been mitigated, a prior consultation must be considered with the Catalan Data Protection Authority, to which must accompany a copy of the AIPD (art. 36 RGPD).

- Registration of treatment activities (RAT)

Article 30 of the RGPD obliges those responsible for the processing (in this case, the City Council), to keep a record of the processing activities (RAT), which must contain the information detailed in the same article 30, section 1, of the RGPD. According to article 31 of the LOPDGDD:

"1. Those responsible and responsible for the treatment or, as the case may be, their representatives must maintain the register of treatment activities referred to in article 30 of Regulation (EU) 2016/679, unless the exception provided for in its section 5 applies .

The register, which may be organized around structured sets of data, must specify, according to its purposes, the treatment activities carried out and the other circumstances established in the aforementioned regulation.

When the person in charge or the person in charge of the treatment has designated a data protection delegate, they must notify him of any addition, modification or exclusion in the content of the register.

2. The subjects listed in article 77.1 of this organic law will make public an inventory of their processing activities accessible by electronic means, which will contain the information established in article 30 of Regulation (EU) 2016/679 and its legal basis. "

Therefore, the City Council will have to include in the RAT the processing of data through the video surveillance system that is established in the facilities referred to in the query, in the terms provided for in the data protection regulations.

On the other hand, following the full applicability of the RGPD, the need to notify the treatment or the file to the Catalan Data Protection Authority for its registration, as foreseen in article 11 of the instruction

- Purpose limitation principle

At the outset, it must be borne in mind that the images recorded for this security purpose cannot be used for incompatible purposes, unless there is a sufficient legal basis (art. 6.1 RGPD), in application of the principle of purpose limitation (art. 5.1.b) RGPD). Thus, prior to the installation of video surveillance systems in the locations referred to in the consultation, the City Council will have to justify its purpose (article 6 of Instruction 1/2009).

- Principle of minimization

Article 5.1.c) of the RGPD provides that the data processed must be adequate, relevant and limited to what is necessary in relation to the purpose of the treatment.

Considering that the City Council is asking for information on the possibility of installing video surveillance cameras in sports facilities, it should be borne in mind that the installation of cameras in changing rooms, bathrooms, leisure or rest rooms, or other restricted access areas of the buildings or facilities mentioned, could not be adequate to this principle, given that it could be particularly intrusive with respect to the right to privacy, personal dignity or the free development of the personality of those affected (art. 7.3. a) Instruction). All the more reason, taking into account that, according to the consultation, these are facilities used by minors, who as has been said, are a group vulnerable to the effects we are dealing with.

In the report to be drawn up, or if applicable to the AIPD, the proportionality of the installed system must be justified taking into account the purpose.

- Integrity, security and confidentiality of data

In terms of video surveillance, it is also necessary to take into account, among others, the principles of integrity and confidentiality of the personal data that are the subject of treatment (art. 5.1.f) RGPD). For this reason, it will be necessary to adopt the security measures that are required in accordance with article 32 of the RGPD, DA 1a of the LOPDGDD and paragraphs 4 to 6 of article 21 of instruction 1/2009.

- Conservation of images

Given that the consultation mentions the possibility that the images can be used *"as evidence in the event of a complaint or initiation of disciplinary proceedings, if applicable"*, we recall that, according to article 22.3 of the LOPDDD:

"3. The data will be deleted within a maximum period of one month from its capture, 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."

- Duty of information to those affected

The City Council must also comply with the duty of information to those affected, in compliance with the principle of transparency (art. 5.1.a) RGPD). Specifically, according to 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 in charge 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."

Thus, it will be necessary to inform the affected persons in a clear and permanent manner about the existence of cameras in the facilities and locations subject to consultation by placing as many informative posters as are necessary to guarantee their knowledge, following the location, number, content and design criteria established in article 12 of Instruction 1/2009, as well as providing the information required by the RGPD (arts. 13 and 14, to which we refer).

In accordance with the considerations made in these legal bases in relation to the consultation on the installation of surveillance cameras in the municipal swimming pool, the municipal sports center and the Castle, the following are done,

Conclusions

Given the information available, the City Council could have a sufficient legal basis to carry out the processing of images through video surveillance cameras in the spaces referred to in the query, given the provisions of article 6.1.e) of the RGPD, in connection with article 22 of the LOPDGDD, if it is done under the terms of sections 1 and 2 of this article.

Regarding the procedure to be followed in order to consider the video surveillance system suitable for the data protection regulations, it will be necessary to comply with the principles and obligations established in the data protection regulations (RGPD and LOPDGDD) and, where appropriate, in Instruction 1/2009.

Barcelona, November 30, 2020