

CNS 21/2021

Opinion in relation to the query made by a City Council regarding the installation of cameras for the purpose of video surveillance

A City Council consultation is presented to the Catalan Data Protection Authority in which the Authority is requested to issue an opinion in relation to the provenance of the installation of cameras at two municipal locations with the aim of protecting municipal facilities and heritage, as well as guaranteeing the operation of public services and the interests of the municipality.

Attached to the request for an opinion was a project/budget prepared by a company, for the installation of the video surveillance system in each of the two locations.

Given that the documentation provided did not offer sufficient information to be able to analyze the adequacy of the systems to the personal data protection regulations, the Report referred to in article 10 of Instruction 1/2009 was requested from the City Council, of February 10, on the processing of personal data through cameras for video surveillance purposes.

The City Council has sent two documents it qualifies as Memoirs (March 2021 version), [...] although they do not correspond to the content provided for in Instruction 1/2009.

Having analyzed the request, which is not accompanied by more information, in view of the current applicable regulations and in accordance with the report of the Legal Counsel, the following is ruled

I

(...)

II

In accordance with the provisions of articles 2.1 and 4.1 of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of this data and which repeals Directive 95/46/CE (General Data Protection Regulation), hereinafter RGPD, the data protection regulations apply to the treatments that take place in term on any information "about an identified or identifiable natural person (the "data subject"); an identifiable natural person shall be considered 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 own elements

of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person".

Based on this basis, and transferred to the case of the consultation, the data protection regulations will apply to the extent that the video surveillance system that the City Council intends to install allows physical persons to be identified directly or indirectly - either because the image of a natural person accessing a building is captured, because it is on a public road or, for example, images of vehicles that circulate on the streets of the municipality are captured and people can be identified through the number plate-

According to the documentation attached to the consultation, the project would include the installation of several cameras which, on the one hand, would focus on "[...] the area in front of the town hall [...], parking area, multipurpose room and the indoor and outdoor sports area [...]" and, on the other hand, the other cameras would be located in "[...] the Neighborhood area [...]" and, in particular they would focus on "[...] the 3 areas of the residents' domestic waste containers [...]".

Consequently, there is no doubt that the installation of the video surveillance system in these areas would allow the direct or indirect capture of personal data. Therefore, this treatment will be subject to the principles and guarantees of the personal data protection regulations, that is, the RGPD, Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of rights (LOPDGDD)) and, specifically, to Instruction 1/2009, of February 10, of the Catalan Data Protection Agency, on the processing of personal data through cameras for video surveillance purposes, in what is not has been modified by the RGPD and the LOPDGDD.

III

According to the information sent by the City Council, the installation of the cameras responds to the need to deter vandalism or the commission of violations in the areas that are intended to be recorded with the video surveillance system and, if it were the case, interpose the legal measures that are deemed relevant at any given time. In short, and in accordance with what the City Council sets out in the consultation request, the installation of this system "[...] becomes necessary for the protection of municipal facilities and guarantee the proper functioning of public services and the interests of the municipality".

In accordance with the provisions of article 5.1.a) of the RGPD, any processing of personal data must be lawful, loyal and transparent in relation to the interested party. In this sense, the RGPD establishes the need to comply with one of the legal bases of article 6.1.

In the field of 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 may be lawful, if "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment".

It should be borne in mind that, in accordance with article 6.3 of the RGPD in relation to article 8.2 of the LOPDGDD, "The processing of personal data can only be considered based on the fulfillment of a mission carried out to term in the public interest or in the exercise of public powers conferred on the person in charge, [...] when it derives from a competence attributed by a rule with the rank of law."

To this end, treatments for the purpose of video surveillance, as is the case at hand, are regulated in article 22 of the LOPDGDD, which provides for the following:

"1. Natural or legal persons, public or private, can carry out the processing of images through camera or video camera systems in order to preserve the safety of people and property, as well as their facilities.

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

However, it is possible to capture the public road in a greater extent when it is necessary to guarantee the safety of goods or strategic installations or infrastructures linked to transport, without in any case the capture of images of the interior of a private home.

[...]

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 the competent bodies for surveillance and control in penitentiary centers and for control, the regulation, surveillance and discipline of traffic is governed by the legislation transposing Directive (EU) 2016/680, when the treatment has the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, including protection and prevention against threats to public security. Outside of these cases, this treatment is governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this Organic Law."

Taking this into account, the purpose to which the City Council wants to allocate the video surveillance system could correspond to "[...] with the purpose of preserving the safety of people and property, as well as its facilities" to which article 22.1 of the LOPDGDD refers to, in relation to article 6.1.e) of the RGPD. However, it is necessary to carry out an analysis of the municipal sites where the City Council intends to install cameras in order to assess whether this would be a legal basis that could protect the treatment.

According to the information provided, the City Council intends to install video surveillance cameras, on the one hand, in "[...] the area in front of the city hall [...], parking area, multipurpose room and the indoor and outdoor sports area [...]" and, on the other hand, in "[...] the 3 areas of the residents' household waste containers [...]"

It should be borne in mind that, in accordance with article 22 of the LOPDGDD, the legitimation would not cover the capture of images of the public road to the extent that it is not accessory - in the sense that the capture of the public road is limited to what is essential for the purpose of preserving the

safety of people and goods in the facilities - or it is about guaranteeing the safety of goods or strategic facilities or infrastructures linked to transport.

The capture of images on the "public road" corresponds only, in principle, to the security forces and bodies, in accordance with the provisions of the applicable specific regulations (Organic Law 4/1997, of August 4, for which regulates the use of video cameras by the Security Forces and Bodies in public spaces, developed in Catalonia by Decree 134/1999, of 18 May, regulating video surveillance by the Generalitat police and the police local in Catalonia).

On this, this Authority already pointed out, in Opinion CNS 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, other private spaces open to the public (such as commercial areas) are also considered public places. 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 (...). "

Transferring these considerations to the case at hand, the capture of images in the area in front of the Town Hall, the parking area and the three areas of the household waste containers located in the neighborhood [...] (areas that according to the information available, they would be in public space) would involve the processing of images from public streets. Based on the information that can be seen from the plans provided, it cannot be concluded that when the City Council alludes to the installation of cameras in the area in front of the City Hall, it is limited to the video surveillance of the installations. locations of the building or its accesses, nor that the parking lot or the areas where the waste containers are located are located within buildings or municipal equipment.

Taking this into account, the capture and recording of these 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, although the City Council does not provide information on this matter, based on the public information on the website of the local entity, it does not appear that it has local police, therefore, a priori, the City Council would not be entitled to carry out this video surveillance treatment in relation to the area in front of the City Council, the parking area and the three areas of domestic waste containers.

In any case, the capture of images in these spaces for public security purposes by the security forces and bodies should be subject to the provisions of Law 4/1997 and its deployment regulations (authorization by the General Directorate of Security Administration of the Department of the Interior, previous report of the Commission for the control of video surveillance devices of Catalonia) and in accordance with the conditions and requirements established in that regulation.

It should be borne in mind that at the time of drafting this opinion the Congress of Deputies is processing the Draft Organic Law on the protection of personal data processed for the purpose of prevention, detection, investigation and prosecution of criminal offenses and executions of criminal sanctions, in transposition of Directive (EU) 2016/680 of the Parliament and of the Council of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of this data and by which Framework Decision 2008/977 / JAI of the Council is repealed, which, in the version of February 19, 2021, articles 15 to 18 dedicate the specific regime for the processing of personal data in the field of video surveillance for security forces and bodies.

IV

In relation to the facilities relating to the multipurpose room and the sports area, indoor and outdoor, although from the information sent by the City Council it is not clear exactly the characteristics of these spaces, it would seem that on the one hand, with respect to the multipurpose hall, it would be a municipal facility which is intended for both the organization of cultural activities and sports activities. And in relation to the sports area, both indoor and outdoor, it seems clear that it would refer to the security of an area for the practice of sports with some type of access limitation.

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 install a video surveillance system as long as it refers to the facilities themselves and that, where applicable, the cameras that can be installed to control access to these facilities sports only capture the essential minimum of the public road to control said accesses (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 the data protection regulations (RGPD and LOPDGGD), in particular the aforementioned article 22 LOPDGDD and Instruction 1/2009, of February 10, 2009, of the Catalan Data Protection Agency, on the processing of personal data through video surveillance cameras.

Aside from the need to have a legal basis to carry out any treatment, which as we have explained could be found in article 22 LOPDGDD in relation to article 6.1.e RGPD, the adequacy of this treatment to the data protection regulations will also require comply with the rest of the principles and obligations established in the RGPD and LOPDGDD and, in special, Instruction 1/2009.

For these purposes, and in accordance with the principle of proactive responsibility (art. 5.2 RGPD), the Report referred to in article 10 of Instruction 1/2009 will play an essential role, given that it will be in this report where it will be necessary to document the fulfillment of the aspects that will be analyzed in a necessarily brief way, given the limitation of the information available on the system that is intended to be installed.

In any case, below we make special reference to some of the considerations that must be taken into account before the implementation of video surveillance treatment, in accordance with the aforementioned regulations:

- Purpose limitation principle (art. 5.1.b) RGPD).

Prior to the installation of video surveillance systems in the multipurpose room and the sports area, the City Council will have to justify the purpose of the treatment (for example, because there have been previous acts of vandalism that have damaged the municipal heritage) and to what extent it would imply an improvement of the public service or activity, referring to the fact that the aforementioned purpose cannot be achieved from other means that, without requiring disproportionate efforts, are less intrusive for people's rights .

In view of the information provided, although it points to reasons for security and the operation of public services, the purpose of each of the cameras or video surveillance systems is not clear, nor is it mentioned what the security problems would be in the which it is intended to deal with.

In fact, especially in the case of the multipurpose room, there may be doubts about the relevance of installing a video surveillance system within this space for security purposes, since there is no record of the existence a specific security problem that cannot be achieved by installing cameras, for example, exclusively at the entrance to the room.

The concretization of these aspects is essential to be able to analyze the legitimacy of the system.

It should be borne in mind that the images recorded for the purpose of video surveillance cannot be processed subsequently for incompatible purposes, unless there is a sufficient legal basis (art. 6.1 RGPD).

- Principle of minimization (art. 5.1.c) RGPD).

Based on this principle, transferred to the particular case, the images captured by the video surveillance system must be appropriate, relevant and limited to the purpose of video surveillance.

For this purpose, first of all, it is necessary to clearly establish whether the video surveillance system, in addition to the images, will also record the voice and to what extent this treatment is necessary with respect to the purpose of the video surveillance. Otherwise, disproportionate treatment may result.

Equally, it is essential to assess in the light of these principles other aspects such as the specific location of the cameras, their field of view, the degree of definition of the camera, the capture or not

of sound, etc. In view of the little concreteness of the information provided, it is not possible to make a precise analysis of these questions.

On the other hand, and without prejudice to the considerations made from the point of view of the principle of purpose, bearing in mind that the City Council wishes to install cameras in the multipurpose room, especially because it seems that this space is intended, among other activities, in the organization of cultural events, it is necessary to assess to what extent it is possible that special categories of personal data are processed in accordance with article 9.1 of the RGPD ([...] personal data that reveal the ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation, and the processing of genetic data, biometric data aimed at uniquely identifying a natural person, data relating to health or data relating to sexual life or the sexual orientation of a physical person.) or other personal data on which special care must be taken in its treatment, for example, regarding minors.

Equally and given the multipurpose nature of the space, the capture during certain activities may be disproportionate in which, by its very nature, the capture of images is particularly intrusive with respect to the right to privacy, personal dignity or freedom personality development.

In relation to this, the City Council must take special consideration if the facilities are used by minors or other vulnerable groups.

- Principle of limitation of the retention period (art. 5.1.e) RGPD).

The captured images must be kept in such a way that the identification of the interested parties is allowed for no longer than is necessary for the purpose of the treatment.

To this end, article 22.3 of the LOPDGDD provides that:

"The data must 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 people, property or facilities. In this case, the images must be made available to the competent authority within a maximum period of seventy-two hours after becoming aware of the existence of the recording.

The blocking obligation provided for in article 32 of this Organic Law is not applicable to these treatments".

- Principle of integrity and confidentiality (art. 5.1.f) RGPD).

According to this principle, captured images must be treated in such a way that their security is adequately guaranteed, including protection against unauthorized or unlawful processing and against their loss, destruction or accidental damage, through the appropriate technical and organizational measures.

To this end, the City Council must adopt the security measures that are required in accordance with the provisions of article 32 of the RGPD and the National Security Scheme, in accordance with the first additional provision of the LOPDGDD). For these purposes, and without prejudice to the measures

that are necessary in view of the risk analysis that must be carried out, in any case, the characteristics of the system must be taken into account, among others:

- o Complete technical conditions of the cameras and other elements. o If the cameras have slots or connections for storage devices external
- o If the cameras are fixed or mobile. If images are captured on a fixed or moving plane. o If you have the possibility to obtain close-ups at the time of capture or once the images are recorded.
- o If the images are viewed directly or only recorded, with access limited to certain assumptions.
- o If the capture, and if applicable the recording, is done continuously or discontinuously. If the images are transmitted. o Forecasts relating to the identification and dissociation mechanisms to attend to the exercise rights of access, rectification, cancellation and opposition. o In the event that the voice is recorded, the distance at which it can be recorded.

In view of these circumstances, it will be necessary to apply the security measures derived from the risk analysis, taking into account especially the provisions of article 21 of Instruction 1/2009.

- Principle of transparency (art. 5.1.a) RGPD): Duty to inform those affected

The City Council must 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:

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood to be fulfilled by placing an information device in a sufficiently visible place with the identification, at least, of 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 an Internet address with 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 in the multipurpose hall and sports area, both in terms of the exterior and the interior, through the col -location of as many informative posters as are necessary to guarantee knowledge before entering the image capture area, following the location, number, content and design criteria established in article 12 of the Instruction 1/2009, as well as providing the rest of the information required by the RGPD (arts. 13 and 14, to which we refer), by another means in accordance with the provisions of the aforementioned article 12.

v

Apart from taking into account the principles established in the data protection regulations, it should be borne in mind that the data protection regulations also provide for specific obligations that

the City Council will have to comply. In particular, highlight the obligations relating to the definition of the roles of the different agents who can intervene in the management of the system, the preparation of a Report, the incorporation of the treatment in the register of treatment activities (RAT), as well as, if applicable, the data protection impact assessment.

- It is important to define the responsibilities of each agent who will intervene in the treatment, whether as a person in charge of the treatment (determination of the person in charge, of the system operators, security manager, the people in the service of the City Council who have access to the images, etc.), or as a processor (art. 4.8 RGPD) in the event that a third party must intervene on behalf of the City Council. In the event that a processor must intervene, the agreement or contract referred to in article 28 RGPD must be established.

- Elaboration of a Report

Article 10 of Instruction 1/2009 provides that, prior to the start-up of the video surveillance treatment, a report must be drawn up documenting the following aspects:

"[...] a) Organ, organization or entity responsible: specifying the person responsible for the file, the persons operating the video surveillance system, as well as, where appropriate, the person responsible for the installation and its maintenance.

b) Justification of the legitimacy of the capture and subsequent treatments that are foreseen: it is necessary to state whether the consent of the affected is counted or, if this is not the case, which of the sections of article 6.2 of Organic Law 15/ 1999, of December 13, on the protection of personal data, and if applicable, other applicable regulations, in the specific case, for the purposes of legitimizing the processing of images and voices.

c) Justification of the purpose and proportionality of the system, in accordance with what is established in articles 6 and 7 of this Instruction.

d) Personal data processed: it is necessary to specify whether the voice will also be recorded and whether the purpose involves, predictably, the capture of images that reveal particularly protected personal data or others that require a medium or high level of security.

e) Location and field of view of the cameras: reference must be made to the location and orientation 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.

f) Definition of system characteristics. In this section you must specify: Total number of cameras that make up the system. Technical conditions of cameras and other elements. If the cameras have slots or connections for external storage devices.

If the cameras are fixed or mobile. If images are captured on an ix plan or mobile. If you have the possibility to obtain close-ups at the time of capture or once the images have been recorded. Whether the images are viewed directly or only recorded, with limited access to

certain cases provided for in the Report. If the capture, and if applicable the recording, is done continuously or discontinuously. If the images are transmitted. Provisions relating to the identification and dissociation mechanisms to attend to the exercise of the rights of access, rectification, cancellation and opposition. When recording voice, you also need to specify the distance at which it can be recorded.

g) Duty of information: it is necessary to include a reference to the number and location of information posters, as well as to other additional means of information, in order to certify compliance with the duty of information.

h) Period for which the system is installed and period of conservation of the images. i) Planned measures to evaluate the results of the system's operation and the need for its maintenance.

j) Security measures: specification of the level of security required and description of the security measures applied.

10.2 The information referred to in sections e) and ig) must be accompanied by the corresponding graphic information. [...]"

It is necessary to highlight the fact that following the full applicability of the RGPD, and the entry into force of the LOPDGDD, the references to Organic Law 15/1999, of December 13, on the protection of personal data have to understand made in the RGPD.

As has been made clear in the antecedents of this opinion, despite the fact that the City Council has sent with the consultation two documents that qualify as "Memories", their content does not correspond to the provisions of article 10 of Instruction 1/2009.

In relation to the deficiencies detected, the City Council must specify in this document, at least, among other aspects that may be relevant, the persons operating the video surveillance system; the justification of the legitimacy of the recruitment; the justification of the purpose and proportionality of the system; the location and field of view of the cameras duly defined; the definition of the characteristics of the system; the installation period; the measures adopted regarding its maintenance and security measures in relation to the processing of personal data.

- Registration of treatment activities

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.

In addition, in accordance with article 31.2 LOPDGDD, the City Council must also publish by electronic means an Inventory of treatments that includes the information referred to in article 30.1 of the RGPD, in addition to the legal basis of the treatment:

"2. The subjects listed in article 77.1 of this Organic Law must make public an inventory of their processing activities accessible by electronic means which must include 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 and in the inventory the processing of data through the video surveillance system established in the multipurpose room and the sports area, in the terms provided for in the data protection regulations (art. 30 RGPD and 31 LOPDGDD).

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 registration must be considered repealed.

- Impact assessment related to data protection

Article 35.1 of the RGPD establishes the obligation of those responsible for the treatment to carry it out prior to the start of the treatment, when it is likely that due to their nature, scope, context or purpose they involve 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 a "large-scale systematic observation of an area of public access" (art. 35.3.c) RGPD), when large-scale video surveillance systems are used.

In the case we are dealing with, it seems that the treatment would not meet the considerations that may require the preparation of an impact assessment given that it does not appear that it refers to a large-scale catchment, which involves the systematic observation of spaces public, that affects particularly vulnerable groups, or that there is a particularly invasive use of new technologies (remote voice recording, facial recognition, etc.). However, the analysis of whether or not it is necessary to carry out an impact assessment must be done by the person responsible for the treatment in view of the circumstances of the specific case and in view of the circumstances that are foreseen not only in the article 35.3 RGPD but also in article 28 of the LOPDGDD and the [List of types of treatment operations that must be submitted to AIPD](#) published by this Authority.

In the event that an AIPD has to be carried out, it is appropriate to take into account the [Practical Guide on impact assessment relating to data protection](#), of this Authority, and also the [application](#) to carry out the impact assessment available on the Authority's website.

In the event that an AIPD is made, it would not be necessary to make the Report we have referred to, insofar as the risk analysis already incorporates all the elements that must be included in the report.

In any case, the fact that an AIPD does not have to be carried out does not mean that, in relation to what is provided for in article 32.2 of the RGPD, the City Council does not have to assess the adequacy of the security level of the system of video surveillance based on the risks presented by this treatment, in particular as a result of the accidental or unlawful destruction, loss or alteration of the personal data processed, stored or otherwise processed, or unauthorized communication or access in said images. For this purpose, it must be taken into account that in accordance with the principle of

proactive responsibility, the City must be able to demonstrate that this risk analysis has been carried out.

Conclusions

As a result of the information contained in the documentation sent, the City Council could have a sufficient legal basis for the capture of images through video surveillance cameras in the spaces related to the indoor and outdoor sports area for security reasons, given the provisions of article 6.1.e) of the RGPD, in connection with article 22 of the LOPDGDD. This qualification cannot be ruled out as existing in the case of the multipurpose room, although in this case the justification of its purpose based on security reasons does not seem clear a priori. To this end, 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.

The video surveillance system of the area in front of the Town Hall, parking area and the area of the residents' household waste containers, for security reasons, is governed by the regulations governing police video surveillance, in the terms set out.

Barcelona, April 28, 2021