

CNS 43/2021

**Opinion in relation to the inquiry made by several companies in the teaching field, in relation to the position of responsible for the treatment of camera and mobile images**

A letter from the data protection representative of several companies in the teaching field is submitted to the Catalan Data Protection Authority, in which it is requested that the Authority issue an opinion on the status of data controller images obtained with cameras and mobile phones.

The inquiry explains that companies have acquired cameras and mobile phones to record images in their facilities. The consultation considers that these companies would be responsible for the processing of image recording activity. The inquiry adds that those who use the cameras and mobile phones are the workers/teachers of other companies, different from those formulating the inquiry. Since, according to the inquiry, these other companies consider that they would be responsible for the treatment, it is asked who is considered responsible for the treatment in this case.

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

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(...)

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The inquiry states that the companies (...), would have bought "cameras and mobile phones to make recordings of images that are recorded in the facilities also of the aforementioned companies", and considers that these companies "would be responsible for the treatment of the image recording activity."

The consultation adds that, however, "who use the cameras and mobile phones are the workers/teachers made available by three different companies to those mentioned", whose representatives, according to the consultation, "consider that those responsible for treatment they are to decide on the ends and means of the treatment."

Specifically, the query asks "who is considered responsible for treatment" in this case. For this reason, this report will focus solely on the analysis of this issue, without prejudice to the fact that it will also be necessary to take into account the rest of the principles and obligations derived from the personal data protection regulations, depending on the purpose and the characteristics specifics of the system, which are not specified in the consultation.

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).

The processing of personal data, specifically, the image or, where appropriate, the voice of natural persons, to which the query refers according to the available information, is subject to the principles and guarantees of the personal data protection regulations, that is, the RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD)).

The consultation refers to the fact that it is planned to "carry out image recordings" in the facilities of the teaching centers making the consultation. The query explains that these centers would have acquired "cameras and mobiles" (in reference, it seems, to mobile phones, although it could also refer to mobile cameras), without further details about these devices (type, planned location, possibility to record images and/or sounds, etc). Nor is information provided regarding the purpose of these recordings, although it seems that it could be for the purpose of monitoring the centers - video surveillance -, without ruling out others, such as work purposes, teachers, etc. In addition, the consultation adds that the third companies on which the workers of the centers depend, claim to be able to decide on "the ends and the means of the treatment", a precision that does not contribute to clarifying what would be the purpose to which compliance is sought with ima

In the event that the query refers to the use of cameras or other devices for the purpose of monitoring the educational centers in question (surveillance of the facilities of the centers, access control, etc.) or even if it obeys other purposes such as teaching or labor control, article 22 of the LOPDGDD must be taken into account, according to which:

"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.

(...)

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.

(...)

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.”

Thus, in the event that the inquiry refers to the establishment of a video surveillance system of own and delimited spaces of the centers formulating the inquiry, the applicable regime would be that provided for in the regulations for the protection of personal data (RGPD and art. 22 LOPDGD, as well as, where appropriate, Instruction 1/2009, of February 10, of the Catalan Data Protection Agency, on the processing of personal data through video surveillance cameras).

In this regulatory context, and in relation to the issue raised, in accordance with article 4.7 RGPD the person responsible for the treatment is "the natural or legal person, public authority, service or other organism that, alone or together with others, determines the ends and means of the treatment".

Based on the information available, in the event that the educational centers formulating the consultation are the ones that have the capacity - and on which the decision rests - to determine the purpose of the treatment (apparently, the video surveillance of certain spaces and accesses of educational centers), as well as the means of will be used for this purpose (number and technical characteristics of the cameras, location of each camera, capture and, where appropriate, recording of the images, preservation of the images, planned accesses, etc.), these centers will be responsible for processing the images obtained through the camera system that can be ena

Having said that, the consultation suggests that the companies that make the workers/teachers available to educational centers who, based on the information available, will use the cameras and mobile phones, claim to be responsible for the treatment.

Regarding this, and according to the definition of article 4.7 of the RGPD and the information available, it should be noted that, given the contractual relationship between the teaching centers and these third companies, it cannot be ruled out that they may have also ability to decide on the purpose of the treatment and the means to be used. If so, for the purposes of the regulations

protection of personal data, it cannot be ruled out that they may also have the status of responsible.

In any case, beyond remembering that the status of responsible corresponds to the natural or legal person who meets the requirements of article 4.7 of the RGPD, in view of the information provided this Authority cannot determine, in the case specific issue that arises to which specific company, center, or natural person must be attributed the status of responsible.

On the other hand, it is also necessary to take into account that the regulations for the protection of personal data also provide for the possibility of establishing a joint responsibility for the treatment, that is to say that two or more persons responsible jointly determine the objectives and means of the treatment (art. 4.7 and art. 26 RGPD and art. 29 LOPDGDD).

Thus, according to article 26 of the RGPD:

"1. When two or more persons responsible jointly determine the objectives and means of the treatment, they will be considered co-responsible for the treatment. The co-responsible parties will determine transparently and by mutual agreement their respective responsibilities in fulfilling the obligations imposed by this Regulation, in particular regarding the exercise of the rights of the interested party and their respective obligations to provide information referred to in the articles 13 and 14, except, and to the extent that, their respective responsibilities are governed by the Law of the Union or of the Member States that applies to them. Said agreement may designate a point of contact for those interested.

2. The agreement indicated in section 1 will duly reflect the functions and respective relationships of the co-responsible parties in relation to the interested parties. The essential aspects of the agreement will be made available to the interested party.

3. Regardless of the terms of the agreement referred to in paragraph 1, the interested parties may exercise the rights recognized by this Regulation against, and against, each of those responsible."

In the case at hand, given the information available, the possibility cannot be ruled out that the teaching centers in question can determine the purpose of the treatment and articulate the means of the treatment, individually (by each of the teaching centers to which it refers the consultation), or jointly between the different centers and even, where appropriate, with the third companies to which the consultation refers.

In any case, if a co-responsibility model is established in relation to a certain data processing - as it could be, in this case, the video surveillance system in teaching centers -, the RGPD requires the signing of an agreement that determines clearly the respective functions and relationships of the co-responsible in relation to the interested parties, who must know the essential aspects of the agreement (art. 26 RGPD).

**It should also be remembered that, in accordance with article 4.8 RGD, the person in charge of the treatment is "the natural or legal person, public authority, servicio or otro organismo que trate datos personales por cuenta del responsable del tratamiento;"**

**In the event that this figure is used, it is necessary to define the responsibilities of each agent who intervenes in the processing of data derived from the installation of the video surveillance system, through the corresponding agreement or contract, in the terms of the article 28 of the GDPR.**

**In accordance with the considerations made in these legal foundations in relation to the query formulated, the following are made,**

**conclusion**

**In accordance with the provisions of article 4.7 of the RGD, the status of person in charge of the video surveillance system in the educational centers that make the inquiry corresponds to the natural or legal person who has the capacity to decide on the implementation of the system, on the purpose of the same, and about the rest of the characteristics and conditions in which the treatment is ca**

**Barcelona, September 23, 2021**