

CNS 4/2022

Opinion in relation to the query made by a city council regarding the suitability of the installation of video surveillance cameras for the recording of islands of municipal waste containers in the municipality.

A query from a city council is presented to the Catalan Data Protection Authority regarding the compliance with data protection regulations of the installation of video surveillance cameras for the recording of waste container islands municipalities in the municipality.

A report called "Technical report on the need to have video surveillance in certain groups of urban solid waste containers" is attached to the consultation.

Analyzed the query, given the current applicable regulations, in accordance with the report of the Advisory Board Legal notice of the following:

I

(...)

II

This opinion is based on the information contained in the technical report that accompanies the consultation carried out by a city council, called "Technical report on the need to have video surveillance in certain groups of urban solid waste containers" that structure in four sections and two annexes.

In the first section of the municipal report, an introduction is made to the problems existing in the municipality in relation to certain groups of urban solid waste collection containers in which the city council has detected an increase in bulky and other waste deposited in such a way irregular, as well as certain uncivil acts (classified as administrative offences to the municipal ordinance on measures to promote civility and coexistence), and vandalism, such as the destruction and burning of containers.

The second section analyzes the installation needs of the video surveillance system, taking into account the different options studied and the legitimacy of the capture and processing of the data. As indicated "the object or purpose of the capture and processing of the images recorded, is the prevention of uncivil or even criminal behavior that can occur in the waste collection containers", in addition, it is made clear that the recordings of the area will be "treated only for the specified, explicit and legitimate purposes set out in this report (improve security and protect citizens and urban furniture from uncivil and vandalism)".

The third section describes the proposed system of seven surveillance cameras, one for each island of containers located on the public road, which are expected to focus exclusively on waste containers with a fixed viewing angle.

The fourth section describes the technical measures implemented (fixed cameras that record exclusively the delimited space, access to the images only by authorized technicians, temporary limitation of the conservation of the images), as well as the legal measures (guaranteeing the affected person's right to information, supplementing the information on the municipal website, updating the City Council's Processing Activities Register and regulating confidentiality clauses with suppliers).

Regarding the annexes, annex 1 includes the list of the locations planned to install the video surveillance cameras and informative posters, with indication of the proposed angle and the recording surface, as well as the definition and characteristics camera techniques, and the management and recording system of the images captured and the characteristics of the fences.

Finally, annex 2 incorporates the video surveillance poster model to give effect to the right to information.

III

In order to analyze the adequacy of the data protection regulations of the treatment proposed by the city council and described in the aforementioned technical report, it is necessary to start from the premise that, in accordance with what is established in articles 2.1 and 4.1 of the RGPD, the data protection regulations apply to the treatments that are carried out on any 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".

The processing of personal data for video surveillance purposes is subject to the principles and guarantees of the RGPD, Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) and, specifically, to 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, where it has not been affected by the RGPD and the LOPDGDD.

The relevance or not of using a certain video surveillance system, from the perspective of the protection of personal data, must respond to a prior assessment and weighting of the City Council, which must take into account, among others, the impact on citizens' rights and the compliance with the principles and guarantees of the aforementioned data protection regulations.

With regard to the principles and guarantees of the data protection regulations, the use of cameras or video surveillance systems must respect, among others, the principles of legality (art. 5.1.a RGPD), limitation of the purpose (art. 5.1.b of the RGPD) and data minimization (art. 5.1.c of the RGPD), from which data can only be captured and processed through video surveillance systems under the auspices of a legal basis, with specific, explicit purposes and

legitimate, and sticking to data that is adequate, relevant and limited to what is necessary in relation to the intended purpose.

It is therefore necessary to analyze, first of all, whether the proposed treatment complies with the principle of legality, which requires having a sufficient legal basis to enable the treatment.

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. And in this sense, the RGPD establishes the need for one of the legal bases of article 6.1 to apply.

As this Authority has decided on other occasions, in the field of public administrations, the capture of images for video surveillance purposes 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".

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of the Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (LOPDGDD), data processing can only be considered based on the bases legal provisions of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

Based on what is described in the city council's report, two distinct purposes are identified with regard to the proposed treatment, one related to the proper functioning of the waste collection system and a second related to public safety derived from conduct that, as indicated, may be criminal. We will analyze both purposes separately.

IV

With regard to the purpose related to the proper functioning of the waste collection system, it is necessary to start from the fact that article 22.1 of the LOPDGDD enables the processing of data from video surveillance in the following terms: *"Physical persons or legal, 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.* "

The municipality has powers attributed to both municipal waste management and civics and public safety.

Article 25.2.b) of Law 7/1985, of April 2, regulating the bases of the local regime (LBRL) provides that the municipalities exercise in any case their own powers, in the terms provided by the legislation state and regional, and among others, the management of urban solid waste. At the same time, with regard to this competence, article 26 of the LBRL provides that all municipalities, at least, must provide the waste collection service (26.1.a), and in the case that the municipality has a population of more than 5,000 inhabitants must also be in charge of waste treatment (26.1.b). In similar terms, articles 66.4.l) and 67.a) of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC).

In the field of sectoral regulation, Legislative Decree 1/2009, of July 21, approving the revised text of the Waste Regulatory Law (DL 1/2009) aims to ensure that the management of waste is carried out without endangering people's health, reducing the environmental impact and, among other things, preventing the abandonment, dumping and, in general, any uncontrolled disposal of waste (art. 2.d), providing in accordance with the local regime regulations, that the management of municipal waste is the responsibility of the municipality, which is responsible for providing the selective collection and transport service, among other services. (art. 42 DL 1/2009).

In this sense, DL 1/2009 foresees the regime from which the municipality must ensure that the waste management service, including collection, is provided in such a way as to prevent abandonment, dumping and in general, the uncontrolled disposal of waste. Likewise, establishes that it is up to the municipality to provide sufficient reserved spaces in the urban road network and neighborhood roads for the placement of containers or other equipment necessary to optimize the collection and transport of waste (article 49.2.b). With these objectives, it foresees a regime of infringements and sanctions for actions and omissions that contravene the provisions of this rule, without prejudice to the others that result from sectoral legislation that affects waste, such as those related to abandonment, the dumping or uncontrolled disposal of waste (art. 76.b in case of minor, art. 75.h for serious infringements, or 74.d for very serious ones).

The exercise of these powers, in relation to article 22 LOPDGDD and article 6.1.e) RGPD can, in principle, grant a legal basis for the treatment.

However, in the case at hand, the fact that, according to the consultation, the video surveillance system is located on the public road is particularly relevant. In this regard, the third point of the technical report indicates, "It is proposed to install 7 surveillance cameras, one for each island of containers, which will focus exclusively on the waste containers with a fixed viewing angle. The surveillance area where these containers will be located will be delimited by vertical fences in order to make it impossible to record images from outside the scope of them. The cameras will record the users of the containers and their use within this perimeter delimited by the vertical perimeter enclosures. Thanks to the built-in sensors, the recording will be made according to motion capture within the limited area, not being a continuous recording.

They will incorporate the possibility of recording night images."

Despite these considerations, as can be seen from the example of vertical closure (Illustration No. 22) and the proposed recording angle and surface (Illustration No. 2, 5, 8, 11, 14, 17 and 21) which are included in annex 1 of the same report, although it is proposed to make some vertical closures in the rear area of the containers located on the public road, these do not delimit the entire perimeter of the containers since the part front remains open to the public road, so the video surveillance system allows to record images not only of the people who access the area to deposit the rubbish in the containers, but of anyone who passes through that area, including vehicles that they circulate on that section of the public road.

In this context, there seems to be no doubt that the video surveillance cameras that are planned to be located in the waste collection areas described are located on the public road and can collect personal data of the users of the containers, but, in addition, for the good which are focused exclusively on waste containers, also allow the direct or indirect capture of personal data of people passing by on public roads and of vehicles that circulate through these waste collection areas (in such a way that people can be identified from of registration). Also, seen

that, it does not seem that the capture of images of the public road in the case at hand should be merely incidental, but that it would be carried out principally.

It should be noted that this Authority has on several occasions analyzed the installation of video surveillance systems in public spaces, specifically, on public roads (among others, in Opinions 1/2016 or 14/2017, which can be consult the website www.apdcat.cat).

For this purpose, it is necessary to take into account article 22 of the LOPDGDD, which provides for the following:

"[...]

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."

For its part, article 5.4.b) of Instruction 1/2009 establishes that it is not considered legitimate *"the capture of images of people on the public road, unless it is carried out by the forces and the security forces in accordance with its specific regulations. The incidental capture of images from the public road for the surveillance of buildings or installations is only legitimate if it is unavoidable to achieve the purpose of monitoring the building or installation"*.

In relation to the concept of "public place", it should be noted that this Authority already pointed out, in Opinion CNS 27/2015 (Legal Basis V) that the regulations:

"[...] provides for 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, then, that, for the purposes of establishing the scope that must be given to the concept of "public place", the elements of accessibility and use that citizens

they make this space more relevant to the 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 [...]. "

Thus, the capture of images on the "*public road*" corresponds only, in principle, to the security forces and bodies for certain purposes linked to the prevention, investigation, detection or prosecution of criminal offenses and the protection and prevention in the face of threats against public security, in accordance with the provisions of the applicable specific regulations.

In the matter of police video surveillance, it is necessary to comply with the provisions of Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and execution of criminal sanctions (hereinafter LO 7/2021), which according to its article 1 aims to "*establish the rules relating to the protection of natural persons with regard to the treatment of personal data by the competent authorities, with purposes of prevention, detection, investigation and prosecution of criminal offenses or the execution of criminal sanctions, including protection and prevention against threats to public security.*"

This rule repeals, in so far as it opposes, the regulations applicable to police video surveillance constituted until then by Organic Law 4/1997, of August 4, which regulates the use of video cameras by the Forces and Bodies of Security in public spaces (from now on, LOV), developed in Catalonia by Decree 134/1999, of 18 May, regulating video surveillance by the police of the Generalitat and the local police of Catalonia, by the Order of 29 June 2001, regulating 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.

This regulation, which allows the capture of images from public streets, is limited to those video surveillance systems managed by police forces and for some of the purposes referred to in article 15.2 of Organic Law 7/2021: "*to ensure the protection of own buildings and facilities; ensure the protection of buildings and public facilities and their accesses that are under custody; safeguard and protect the facilities useful for national security and prevent, detect or investigate the commission of criminal offenses and the protection and prevention against threats against public security.*"

It does not seem that the purpose linked to the guarantee of the proper functioning of the waste collection service, and of its good use by citizens, can fit into any of these purposes.

Consequently, the City Council would not be authorized to install the video surveillance system in the waste container islands of the municipality provided for in the municipal report (which would involve the

capturing images of the public road), for the purpose of guaranteeing the proper functioning of the waste collection system, based on the provisions of the police video surveillance regulations.

Finally, it is also necessary to mention article 42 of Law 5/2014, of April 4, on private security (LSP), which establishes an exceptional case to the general rule prohibiting the capture and recording of images on public roads and public spaces by entities other than the Security Forces and Bodies. Specifically, its section 2 provides, with respect to private security companies, that:

"Cameras or video cameras may not be used for private security purposes to record images and sounds of public roads and spaces or of public access except in the cases and in the terms and conditions provided for in their specific regulations, prior administrative authorization by the competent body in each case. (...)"

Thus, in order for the capture of images of people in public places, open or closed, by private security companies to be considered legitimate, the assumption of article 42.2 of the LSP must be met and it must be done in the terms and conditions provided for in the specific regulations.

This possibility would in any case remain subject to the conditions that may be established in this specific regulation. It should be noted that article 42.2 of the LSP has not yet had a regulatory development that allows specifying what these terms and conditions would be, although article 42.6 of the same LSP provides that "in what is not provided for in this law and in its development rules, the provisions in the regulations on video surveillance by the Security Forces and Cuerpos will be applied.

For all this, given the terms of the consultation and the information available, it must be concluded that the City Council does not have sufficient legal authorization to capture the public road in the installation of the video surveillance system described in the consultation, with the purpose of guaranteeing the proper functioning of the waste collection service.

It would be a different matter if the video surveillance camera system was installed in closed and delimited spaces, other than the public road.

This case has been analyzed by this Authority in Opinion CNS 42/2021 which can be consulted on the Authority's website www.apdcat.cat. This opinion concludes that it would be lawful to process data related to video surveillance in waste collection areas if, for example, these areas were located in municipal areas that do not involve the capture of public road (an enclosed area, some outbuilding, yard or annex of a municipal building, etc.).

So, if the video surveillance camera system was installed in closed and delimited spaces, the authorization for the processing of data from the video surveillance for the purpose of monitoring the appropriate use of the waste collection systems and, if applicable, the exercise of the sanctioning power based on the legal basis provided for in article 6.1.e) of the RGPD, can be found justified in the powers that the local regime regulations attribute to the municipalities in matters of management of waste, the sectoral regulations and article 22.1 of the LOPDGDD.

v

In any case, if the video surveillance camera system was installed in closed and delimited spaces, other than the public road, in addition to the principle of legality, the City Council must ensure compliance with the principles and obligations derived from the data protection regulations before the start-up of the video surveillance treatment.

From the perspective of compliance with the principles, and taking into account the information that has been sent with the consultation, it is considered pertinent to refer to some considerations that the City Council must take into account:

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

As stated in the municipal report (point 2.3), images recorded for the purpose of video surveillance cannot be processed later 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, the images captured by the video surveillance system must be adequate, relevant and limited to the purpose of video surveillance. To this end, first of all, the City Council must establish, in the Report, or if that is the case in the privacy impact assessment, clearly, that the video surveillance system will only record images, and not the voice. Otherwise, disproportionate treatment may result.

On the other hand, the City Council must also justify, as it already does in the report presented, the purpose of the treatment (for example, because it has found that in the garbage collection areas materials are dumped outside the containers, or in containers where it does not belong, and this generates extraordinary expenses) and to what extent video surveillance would lead to an improvement of the service or public activity, referring to the fact that the aforementioned purpose cannot be achieved through other means that, without requiring disproportionate efforts, are less intrusive for people's rights. The concretization of these aspects is essential to the extent that it can affect the legitimacy of the system

Equally, it is essential that the report, as is done in the analyzed municipal report, value in the light of this principle other aspects such as the specific location of the cameras, the field of vision, the degree of definition of the camera, the capture or not of the sound, etc. At this point, it is particularly relevant that the field of view of the cameras captures and records only the area of interest in relation to the purpose of the treatment, and that the capture of other areas or of the public road is only accessory.

- 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. In this sense, the proposal contained in the municipal report regarding the retention period for the images, which is established as a maximum of one month from their capture (point 4.1) is positively evaluated in accordance with the provisions of article 22.3 of the LOPDGDD.

- 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. In addition, and without prejudice to the measures that are necessary in view of the risk analysis that must be carried out, in any case, it is necessary to take into account the characteristics of the system, 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 has planned, as stated in point 4.2 of its report, to comply with the duty of information to those affected, in compliance with the principle of transparency (art. 5.1.a) RGPD) through a double-layer system in accordance with the provisions of article 22.4 of the LOPDGDD, according to which:

"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 is necessary to inform the affected people in a clear and permanent manner about the existence of cameras in the video-surveillance areas, by placing as many informative posters as are necessary to guarantee knowledge before entering the area of capture of the image, following the location, number, content and design criteria established in article 12 of Instruction 1/2009, as well as providing the rest of the information required by the RGPD (art. 13), by another means in accordance with the aforementioned article 12.

On the other hand, as also foreseen in the municipal document in its point 4.2, it is necessary for the city council to update the City Council's Treatment Activities Register with the video surveillance treatment that is carried out.

VI

Apart from taking into account the principles established in the data protection regulations, it is necessary to highlight the obligations that the City Council must fulfill 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, as well as, where applicable, the impact assessment relating to data protection.

- 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. If the images are viewed directly or only recorded, with limited access to certain cases provided for in the Memorandum. 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 underline the fact that references to Organic Law 15/1999, of December 13, on the protection of personal data must be understood as made to the RGPD.

- 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.

It should be borne in mind that 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 article 35.3 RGPD but also 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. To this end, it must be taken into account that in accordance with the principle of proactive responsibility, the City Council must be able to demonstrate that this risk analysis has been carried out.

VII

In the municipal report attached to the consultation, a second purpose of the video surveillance system is proposed, which would aim to prevent acts of vandalism (such as the destruction and burning of containers). Thus, it is stated that the aim is "an increase in security against the possible commission of vandalism and criminal acts (...) improve security and protect citizens and urban furniture from uncivil and vandalism (...)".

In accordance with what has been set out in the foundation IV of this opinion, to the extent that this video surveillance system is intended to be installed on public roads, there would only be authorization for the treatment it entails, if it is taken to term the bodies and security forces for one of the purposes provided for in its specific regulations.

LO 7/2021 is applicable to the processing of personal data carried out by the competent authorities, for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions, including the protection and prevention against threats to public security (art. 2 LO 7/2021).

LO 7/2021 dedicates the second section of Chapter II to the processing of personal data in the field of video surveillance by Security Forces and Bodies. Specifically, article 15.2 of LO 7/2021 establishes,

"[...]

In the installation of image and sound recording systems, the following criteria will be taken into account, in accordance with the principle of proportionality: ensuring the protection of buildings and own facilities; ensure the protection of buildings and public facilities and their accesses that are under custody; safeguard and protect the facilities useful for national security and prevent, detect or investigate the commission of criminal offenses and the protection and prevention against threats against public security.”

Thus, the purpose pursued by the city council regarding the prevention of acts of vandalism that may threaten public safety, would be among the purposes that enable the security forces and bodies to carry out the processing of video surveillance data.

Consequently, the City Council would have authorization for the capture of images on public roads for the purpose of preventing acts of vandalism against public safety as long as the capture was carried out by the local police and complied with the conditions and requirements established by LO 7/2021.

Specifically, article 16 of LO 7/2021, regarding the installation of fixed video surveillance systems, as proposed in the consultation, states that:

1. In the public roads or places where fixed video cameras are installed, the person responsible for the treatment must carry out an assessment of the aforementioned principle of proportionality in its double version of suitability and minimum intervention. Likewise, it must carry out a risk analysis or a data protection impact assessment relative to the treatment that is intended to be carried out, depending on the level of damage that may be caused to the public and the purpose pursued.

A fixed video camera is understood to be one anchored to a fixed support or facade, although the recording system can be moved in any direction.

2. This provision will also apply when the Security Forces and Security Forces use fixed installations of video cameras of which they are not the owners and there is, on their part, an effective control and direction of the complete treatment process.

3. These fixed installations of video cameras will not be subject to the preventive control of the local entities provided for in their basic regulatory legislation, nor to the exercise of the powers of the different public administrations, notwithstanding that they must respect the principles of the legislation in force in each material scope of administrative action.

4. The owners and, as the case may be, the holders of real rights on the goods affected by these installations, or those who put them on any title, are obliged to facilitate and allow their installation and maintenance, without prejudice to the compensations that come.

5. Citizens will be informed in a clear and permanent manner of the existence of these fixed video cameras, without specifying their location, as well as of the authority responsible for the treatment before which they can exercise their rights.

Therefore, the person responsible for the treatment, in this case the local police, before starting the treatment must analyze, in accordance with the principle of proportionality, the suitability of the system to achieve the

purpose pursued, and if this is necessary, in the sense that there is no other more moderate measure to achieve that purpose and, in any case, that the treatment will be limited to the minimum necessary data.

In addition, in advance, the authority responsible for the treatment must carry out a risk analysis, and where appropriate, an assessment of the impact relative to data protection (AIPD), depending on the purpose pursued and the risks that can be produced for the citizens.

Regarding the AIPD, article 35 of LO 7/2021 establishes:

"1. When it is likely that a type of treatment, in particular if it uses new technologies, supposes by its nature, scope, context or purposes, a high risk for the rights and freedoms of physical persons, the person responsible for the treatment will, with prior character, an evaluation of the impact of the planned treatment operations on the protection of personal data.

2. The evaluation will include, as a minimum, a general description of the planned treatment operations, an evaluation of risks for the rights and freedoms of the interested parties, the measures contemplated to deal with these risks, as well as the security measures and mechanisms intended to guarantee the protection of personal data and to demonstrate compliance with this Organic Law. This evaluation will take into account the rights and legitimate interests of the interested parties and other affected persons.

3. The data protection authorities may establish a list of treatments that are subject to an impact assessment in accordance with the provisions of the previous section and, in the same way, they may establish a list of treatments that are not subject to this obligation. Both lists will have a purely indicative character."

As long as a list is not published under the terms of the police regulations referred to in the third paragraph of this article 35, the List of types of treatment operations that must be submitted to AIPD published by this may be indicative Authority, referred to in section VI of this opinion.

The authority responsible for the treatment must apply technical and organizational measures, appropriate and proportionate to ensure that the treatment of the data conforms to the provisions legal They must be adjusted to the state of the art and the cost of the application, nature, scope, context, purposes of the treatment, etc.

With regard to the retention period of the images, the authority responsible for the treatment is obliged to destroy them within a maximum period of three months from their capture, except that are related to serious or very serious criminal or administrative offenses in matters of public security, are subject to an ongoing police investigation or an open judicial or administrative procedure (article 18.3 LO 7/2021).

In the event that the commission of facts that may constitute criminal offenses is caught, the person responsible for the treatment, in this case the local police, must make the recording or the original support with the images available to the court and, in the where appropriate, the sounds, within a maximum period of 72 hours from their recording (article 18.1 LO 7/2021). And, in the event that facts are captured that can

be constitutive of administrative offenses related to public security, the recording must be sent to the competent body to sanction them (article 18.2 LO 7/2021).

Likewise, the responsible authority must guarantee that the right to information is effective under the terms of section 5 of article 16 LO 7/2021, in such a way that it is clearly and permanently indicated that processing is being carried out by video surveillance and the identification of the authority responsible for the treatment before which they can exercise their rights, without the need to specify the specific location of the fixed video cameras installed.

In addition to the rest of the guarantees established by the specific regulations analyzed, the authority responsible for the treatment must take the appropriate measures to ensure that only authorized persons access the records, and that these records will not be used for a purpose other than that established for that system.

With regard to the record of treatment activities (article 32 LO 7/2021) the responsible authority must include video surveillance treatment in its record of treatment activities, in which it must state the identification of the responsible for the treatment and their contact details, and in their case, the co-responsible person and the data protection delegate, the purposes of the treatment, the categories of recipients to whom the data is communicated, the description of the categories of interested parties and data, the elaboration of profiles in their case, the legal basis of the treatment, the international transfers, the deadlines for the deletion, and the general description of the technical and organizational security measures.

Conclusions

The current regulations do not give sufficient authorization to the City Council to install a video surveillance system in an open space that is part of the public road in order to control and, where appropriate, exercise the power to impose sanctions regarding uncivil behavior related to waste deposit in collection areas.

If the video surveillance system is installed in closed and delimited waste collection spaces that do not involve the capture of the public road, the city council may have authorization for this treatment, without prejudice to the fact that it must also comply with the rest of the principles and obligations provided for in the regulations for the protection of personal data in the terms provided for in RGPD, the LOPDGDD and Instruction 1/2009.

A video surveillance system on public roads for the purpose of controlling acts of vandalism against public safety could be considered legitimate from the point of view of data protection regulations if it is carried out by the local police in accordance with the principles and regulatory guarantees specific to police video surveillance.

Barcelona, March 10, 2022