

Opinion in relation to the query made by a public company regarding the placement of access control cameras and the use of these images for statistical purposes .

about the placement of cameras in the access control of the centers and facilities managed by the entity to obtain data is presented to the Catalan Data Protection Authority of the vehicles accessing it and the use of this information for statistical purposes.

Specifically, the consultation raises:

"(..) is interested in setting up a data collection and analysis system in the centers and facilities managed by society.

The type of data to be collected and exploited are in reference to the vehicles that access (number of vehicles, typology - trucks, trailers, vans -, routines when on routes and waiting times, ...) The planned technology foresees that the data collection is done through the analysis of images captured through the placement of cameras in the access controls to the different facilities, focused on public roads.

We ask the Agency to comment on this matter, on whether cameras can be placed, the images collected can be processed to obtain the indicated data, and whether this information can be transferred to a third party for exploitation and analysis. It is for the company's internal use and always for statistical purposes."

Having analyzed the consultation, given the current applicable regulations, and in accordance with the report of the Legal Counsel, I issue the following opinion:

I

(...)

II

The public company making the inquiry is, in accordance with article 2 of its statutes, a public company of the Generalitat de Catalunya, in charge of:

"a) The planning, promotion, management and administration of infrastructures and equipment related to transport, logistics and communications systems .

b) The planning, promotion and management of preparatory or complementary activities to the previous ones, even those of an urban nature.

c) The acquisition, alienation, participation and exploitation for any title, of spaces, infrastructures and equipment related to the above. "

According to the Public Sector Register of the Generalitat of Catalonia, published by the Department of Economy and Finance on its website, the entity is a Company 100% Owned by the Generalitat of Catalonia.

Law 32/2010, of October 1, on the Catalan Data Protection Authority, establishes in its article 3 the Authority's scope of action. For the purposes of this opinion, it is necessary to take into account letter e) of this article 3 which provides that the scope of action of the Catalan Data Protection Authority includes the treatments carried out by:

"e) Entities under private law that meet at least one of the three requirements following in relation to the Generalitat, the local bodies or the bodies that depend on them:

first That their capital belongs mostly to the said public bodies.

second That their budget income comes mostly from the said entities public

third That in their management bodies the members appointed by said public bodies be the majority ."

To the extent that the capital of the company formulating the query belongs mostly to the Generalitat de Catalunya, the competence in relation to the control of compliance with the data protection regulations by this company corresponds to the Catalan Authority of Data Protection (article 3.e) Law 32/2010).

III

In the consultation, the Authority's pronouncement is requested on the possibility of the company installing cameras in the access control of the centers and facilities it manages (facing the outside) to obtain and process the data of vehicles that access it (number of vehicles, type - trucks, trailers, vans -, routines on routes and waiting times, etc.) and on whether this information can be transferred to a third party for exploitation and analysis. It is indicated that this information is for internal use of the company and for statistical purposes. It should be emphasized that no detailed information is provided with the query, nor about the specific purpose of the system, beyond saying that it is for a statistical purpose, nor about the specific location and focus of the cameras (it is only indicated that they are outward-facing). This opinion is issued taking this information into account.

The first issue to be analyzed is whether the system that is to be implemented entails the processing of personal data in terms 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 movement of such data and which repeals Directive 95/46/EC (hereinafter, RGPD) which states that the data protection regulations apply (article 2.1) to the treatments that are carried out with respect to any information *"about an identified or identifiable natural person ("the interested party "); an identifiable natural person will be considered any person whose identity can be determined , directly or indirectly , in particular by means of an identifier, como por ejemplo a number, an identification number , location data , an online identifier or one or several elements specific to the physical, physiological , genetic , psychological, economic , cultural or social identity of said person"* (article 4.1).

As indicated in the consultation, " *The type of data to be collected and exploited are in reference to the vehicles that access (number of vehicles, type - trucks, trailers, vans-, routines regarding routes and waiting times, . . .)*" . Although the number of vehicles or their type is not information that contains personal data, the information on vehicle registration plates must be considered personal data, as this Authority has repeatedly pointed out. The license plate information to the extent that it can be combined or associated with other data available to the company could make it identifiable, without requiring disproportionate efforts, to the owner or the driver of the vehicle (CNS 10/2011). This same conclusion can be reached even in cases where the ownership of these vehicles is a legal entity (the data protection regulations do not regulate the processing of data relating to legal entities as established in Recital 15 RGPD), since, from the license plate, information can also be obtained, without disproportionate effort, about the person driving it who is an identifiable natural person.

Also, the information related to the routines regarding the routes taken would also be given personally. From the combination of all this information, data could be obtained about the drivers of the vehicles, the time they spend there, behavioral habits, control of their activity, etc.

On the other hand, if the vehicles are recorded, in all probability the image of the vehicle drivers will also be captured.

But in addition, as indicated, the cameras are intended to be focused on the public road, so it cannot be ruled out that the system also records the images of any person or vehicle that travels there.

In short, to the extent that the camera system that the company intends to install allows physical persons to be identified directly or indirectly, data processing will be taking place (Article 4.2) RGPD), which will remain subject to compliance with the principles and the guarantees of the data protection regulations. Specifically, in the RGPD, in Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) and, in Instruction 1/2009, of February 10, the Catalan Data Protection Agency, on the processing of personal data using cameras for video surveillance purposes, where it has not been affected by the RGPD and the LOPDGDD.

IV

At the outset, in the case raised in the consultation, the fact that, as indicated, the cameras are to be installed focusing on the public road is of particular importance, so that the capture of images will take place not only from the reception areas of the services managed by the company, but also of the public road. Therefore, it would allow recording images not only of vehicles entering the facilities but also of vehicles or people traveling on the public road.

At this point, it is necessary to take into account article 22 of the LOPDGDD which enables the processing of data from video surveillance in the following terms:

"1. The people physical or legal entities , public or private , may carry out the processing of images through camera or video camera systems with the purpose of preserving the security of people and goods , as well as their facilities _

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

However, it will be possible to capture the public road in a higher extent when it is necessary to guarantee the security of assets or strategic facilities or infrastructures linked to transport, without in any case being able to suppose the capture of images of the interior of a home private

(...)

6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the Security Forces and Bodies and by the competent bodies for surveillance and control in prisons and for control, regulation, traffic surveillance and discipline, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment has the purpose of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, including the protection and prevention against threats to public security. Outside of these assumptions, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law.

(...)."

And also article 5.4.b) of Instruction 1/2009, which establishes that it is not considered legitimate to *"capture images of people on public roads, unless it is carried out by the security forces and bodies of 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"*.

The capture of images on *"public roads"* 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 against threats against public security, in accordance with the provisions of the applicable specific regulations.

In this sense, it should be in accordance with the provisions of Organic Law 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and execution of criminal sanctions.

This regulation, which allows the capture of images from public roads, 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, such as *"ensuring 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."*

The purpose described in the inquiry cannot fit into any of the aforementioned purposes. On the other hand, these are not cameras installed by forces and security forces. In such a way that the company would not be legitimate to install the intended surveillance system, given that it would involve the capture of images of the public road.

In this regard, mention should be made 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 spaces public by entities other than the Security Forces and Bodies.

Specifically, article 42.2 provides, with respect to private security companies, the following:

"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. (...)"

In order for the capture of images of people on public roads or in public places, open or closed, by private security companies to be considered legitimate, this assumption of article 42.2 of the LSP must be met and that do with the corresponding authorization, under the terms and conditions provided for in the specific regulations. In any case, the purpose should also be linked to security, which would not be the purpose referred to in the query.

With regard to authorization, note 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 its development rules, will apply what is provided in the regulations on video surveillance by the Forces and Cuerpo de Seguridad"*.

For all of this, in view of the information available, it must be concluded that the company does not, at the outset, have sufficient legal authorization to capture the public road in the installation of the video surveillance system described in the consultation, with the statistical purpose.

V

In the event that the possibility was raised that the system would be installed avoiding the capture of images from the public road, limiting its capture inside the facilities managed by the company, it would be necessary to analyze its adequacy to the rest of the principles and obligations established in the data protection regulations.

In accordance with the data protection regulations, the use of cameras or video surveillance systems must respect, among others, the principles of legality (article 5.1.a) RGPD), limitation of the purpose (article 5.1.b) RGPD) and data minimization (Article 5.1.c) RGPD), from which data can only be captured and processed through video surveillance systems under the protection of a legal basis, for specific, explicit and legitimate purposes, and

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

In relation to the principle of lawfulness, the RGPD establishes that all processing of personal data must be lawful, fair and transparent (Article 5.1.a)). In order to consider lawful treatment, the RGPD establishes the need for one of the legal bases of article 6.1 to be met.

In the field of public administrations, the capture of images for video surveillance purposes can be authorized in the legal basis of article 6.1.e) of the RGPD, according to which data processing can be lawful if "*it is necessary for the fulfillment of a mission made in interest public or in the exercise of powers public given to 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 LOPDGDD, data processing can only be considered based on this legal basis of article 6.1.e) of RGPD when so established by a rule with the rank of law.

Article 22 LOPDGDD legitimizes the capture of images when the purpose is to guarantee the safety of goods and people that are in the premises of the person in charge (in this case it could be the vehicles that access the logistics centers). However, the reference to "*statistical purposes*" that is made in the query does not seem to be linked to security reasons, but to being able to have information about the operation of the service.

It should be noted that the data protection regulations provide, in general, the compatibility of using the information available for statistical purposes (art. 5.1.b) and 89 RGPD). But it should be borne in mind that, in accordance with what is established in article 25 LOPDGDD, these provisions of the RGPD relating to statistical activity must be understood as made to the statistics provided for in the legislation on the public statistical function (in our case Law 23/1998, of December 23, on Statistics of Catalonia). From the information available, it does not appear that the statistics that are intended to be produced form part of the Statistical Plan of Catalonia, so the provisions of articles 5.1.b) and 89 of the RGPD would not apply.

The capture of images of vehicles can be relevant in the operation of the services offered by the company. From this point of view, it cannot be ruled out that the company may have a legitimate interest that enables the capture of the images under Article 6.1.f) of the RGPD, but it must be taken into account that the legal basis of the legitimate interest (art. 6.1.f) RGPD) is applied automatically but it is necessary to make a weighting that takes into account the legitimate interests pursued by the data controller or by a third party, the interests or the fundamental rights and freedoms of the interested party and the appropriate guarantees offered. Regarding this, take into account the criteria defined by the Article 29 Working Group (GT 29), which analyzed the application of legitimate interest in the "*Opinion 06/2014 on the concept of legitimate interest of the responsible of the processing of data under Article 7 of Directive 95/46/EC*".

These criteria can be transferred to the regulation contained in article 6.1.f) of the RGPD to determine whether, in view of the specific circumstances of the case (the rights and interests involved, the reasonable expectations that those affected may have in the your relationship with the person in charge and the safeguards offered by the person in charge), it is appropriate or not to resort to this legal basis.

In any case, this weighting should be documented in the Report and is an indispensable element so that this Authority can pronounce on it.

VI

In accordance with the principle of minimization (articles 5.1.c) RGPD and 6.1 of Instruction 1/2009), images can only be captured and processed through a video surveillance system when they are adequate, relevant and not excessive in relation to the specific, explicit and legitimate scope and purpose for which they want to be obtained.

Therefore, it is necessary to examine whether the capture of the images of vehicles and people accessing the facilities managed by the company is adequate, relevant and not excessive, in relation to the intended purpose, which as indicated has a statistical purpose.

In general, the appropriateness or not of using a certain video surveillance system, from the perspective of data protection, must respond to a prior assessment and weighting, which must take into account, among others, the 'affecting the rights of citizens and compliance with the principles and guarantees of data protection regulations. As established in point 23 of the Guidelines 3/2019 on the treatment of personal data through video devices: "*Before installing a video surveillance system , the person responsible for the treatment debe examine always critically if said measure is first adequate to achieve the objective desired and, secondly place , if it is suitable and necessary for you end _ You should only opt for video surveillance measures if the purpose of the treatment can not be achieved reasonably by others whatever means less intrusive for rights and freedoms fundamentals of the interested party .*"

The processing of the image, and especially the voice, of natural persons for surveillance purposes can only be considered proportionate when it is appropriate to contribute clearly to the improvement of the service or activity, and said purpose cannot be obtained with other means that, without requiring disproportionate efforts, are less intrusive for people's rights. It should also be borne in mind that the economic factor should not be the only element to be taken into account when analyzing the proportionality and convenience of establishing a video surveillance system.

In other words, starting from the premise that video surveillance is an intrusive measure in itself, its use must at all times be proportionate and strictly necessary, in the sense that the intended purpose of capturing the images cannot be achieved- through other less intrusive ways.

It should be remembered in this regard that the treatment of the image for video surveillance purposes can only occur when it is appropriate to contribute clearly to the improvement of the service or activity, and the purpose cannot be obtained by other means that, without requiring disproportionate efforts, are less intrusive for people's rights (article 7.1 of Instruction 1/2009).

It should be emphasized that the person responsible for the video surveillance system must weigh the different rights and legal assets at stake by analyzing the need to use these systems,

the suitability of the installation of video surveillance systems to achieve the purpose pursued, the risk it may pose to people's rights, given the characteristics of the video surveillance system, the circumstances of the capture and the people affected, the absence of alternative surveillance measures that entail a lower risk, in relation to possible intrusions on fundamental rights, if the configuration characteristics of the system allow to achieve the purpose pursued in the least intrusive way for the rights of the affected persons, such as between others, the number of cameras, the use of facial or voice recognition techniques, the use of mere real-time visualization, black boxes, the field of view and the possibility of using masks to obscure certain areas, the mobility of the field of view, the degree of definition of the images or the zoom. This weighting must be documented in the Report provided for in article 10 of Instruction 1/2009 or, where appropriate, in the impact assessment relating to data protection in the event that it is mandatory in accordance with the article 35 RGPD.

In the absence of this report, and with the information available, it does not appear, at first, that the treatment subject to the query consists of the recording of the entrance to the facilities, which will therefore be susceptible to recording the images of all the vehicles that circulate, the people who drive them, the workers who are in the facilities, etc., for statistical purposes (which could be related to the provision of the service), may pass the proportionality judgment of in such a way that the risk it poses to people's rights and the purpose pursued justifies its implementation. A report should be drawn up, in accordance with article 10 of Instruction 1/2009 specifying the data that will be collected and justifying its need to achieve the purpose pursued.

conclusion

Based on the information provided, it can be concluded that the company would not be legitimate to install the intended surveillance system given that it would involve capturing images of the public road.

In the event that the capture of images is limited inside the facilities it manages, in order to assess the legal adequacy of the treatment, this Authority should have a Report, in the terms of article 10 of Instruction 1/2009, where the characteristics of the treatment to be carried out are described in detail, the necessary weighting is done in order to be able to apply the legal authorization based on the legitimate interest (art. 6.1 .f) RGPD) and that allows to evaluate the proportionality of the data being processed and the scope of the treatments that are intended to be carried out, apart from the other extremes required by article 10 of Instruction 1/2009.

Barcelona, November 3, 2022