

Opinion in relation to the query made by the Data Protection Officer of a town hall regarding the installation of video surveillance cameras in the town hall's heritage buildings.

A consultation is presented to the Catalan Data Protection Authority by the Data Protection Officer (DPD) of a town hall regarding the installation of video surveillance cameras in the town hall's heritage buildings.

Specifically, the city council states that it has some municipally owned housing buildings, which are managed by a public company with wholly municipal capital and that most of the housing is rented.

As indicated, the public company considers the possibility of installing video surveillance cameras in the common areas of these buildings, specifically in the entrance corridor and access to the elevator. The DPD states that this treatment would be protected by the provisions of article 22.1 of the LOPDGDD.

In this context, he requests an opinion regarding the possibility of the municipal police exercising control over the cameras and regarding the procedure to be followed in relation to the installation of the video surveillance system .

Having analyzed the query, in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, I inform you of the following:

I

(...)

II

The consultation starts from the premise that the installation of a video surveillance system in the common spaces (entrance corridor and access to the elevator) of municipally owned housing buildings (which are rented) to monitor the good maintenance of the municipal heritage would be protected by the provisions of article 22.1 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

Based on this premise, the DPD requests a statement from the Authority regarding the possibility of the municipal police exercising control over the cameras installed in municipally owned homes and the procedure to be followed.

It should be emphasized that the consultation states that the purpose of the treatment is to ensure the good maintenance of the heritage, but no information is provided either on the

specific location and focus of the cameras , or on the assessment of the need for the implementation of a system as intrusive as video surveillance in homes that, despite being municipally owned, are rented to individuals, being, therefore, their private residence with the consequent impact on their privacy.

Consequently, before analyzing the possibility that it is the municipal police who exercise control over the video surveillance cameras, an analysis should be made on the suitability of the system to the data protection regulations.

III

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 " *on 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 installation of video surveillance cameras in the common areas of municipally owned residential buildings, insofar as it entails the recording of the images of the people who access the common areas of those buildings, involves the processing of personal data that is subject to the principles and guarantees of the personal data protection regulations, in particular, 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 through cameras for video surveillance purposes, in that it has not been modified by the RGPD and the LOPDGDD.

All data processing must comply with the principles contained in Article 5 of the RGPD. Of these principles, we will analyze, first of all, the lawfulness principle of article 5.1.a) RGPD according to which all processing of personal data must be lawful, fair and transparent in relation to the interested party. 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 its purpose is to guarantee the safety of people and property as well as their facilities. Thus article 22 establishes:

"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.

[...]"

It should be taken into account that the Legislative Decree 2/2003, of 28 April, approving the revised text of the Municipal and Local Government Law of Catalonia, gives municipalities powers for the promotion and management of housing (article 66.3.f)).

Law 18/2007, of 28 December, on the right to housing, in its article 4 defines as a service of general interest the activities linked to the provision of housing intended for social policies and provides that "(.. .) *the homes that this law defines as intended for social policies have the status of social housing, whether they are the result of new construction or rehabilitation processes or whether they are obtained by virtue of social mediation and transfer programs* . (article 4.2).

In this sense, article 8 of Law 18/2007, of December 28, on the right to housing, in section 2.bis, establishes:

"Within the framework of the powers of promotion and management of public protection housing referred to in section 2, local bodies exercise the following functions:

a) The commissioning of building projects on land owned by the municipality or on land that is available for the construction of public housing, the bidding and the execution of the works.

b) The definition of the criteria and procedures for awarding the homes promoted by the local bodies and the selection of the people awarded the homes.

c) The management of housing promoted by local bodies under a rental regime and its maintenance.

d) The execution of the programs and lines of action defined by this Law or the housing plans, with the aim of increasing the stock of housing owned or managed by the municipality."

In accordance with the above, the authorization for the processing of data from video surveillance based on the legal basis of article 6.1.e) of the RGPD, can be found justified in the powers that the regulation of local regime and housing regulations attribute to the municipalities in matters of social housing and article 22.1 of the LOPDGDD to the extent that the video surveillance camera system is installed in closed and delimited spaces and

has as its purpose that provided for in article 22 LOPGD (preserving the safety of people and goods, as well as their facilities).

IV

Apart from the need to have a legal basis for the installation of the video surveillance system, which as we have explained could be found in article 22 LOPGD in relation to article 6.1.e) RGPD, the adaptation of the treatment to data protection regulations also requires compliance with the rest of the principles and obligations established in the RGPD and LOPGD and, in particular, Instruction 1/2009.

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 Guidelines 3/2019 on the processing of personal data using 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 ."*

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, since it will be in this report that the responsible of the treatment, before the start of the treatment must document compliance with the aspects that will be analyzed below.

Thus, in response to the query regarding the procedure to be followed in relation to the installation of video surveillance in municipally owned properties, the preparation of the Report referred to in article 10 of Instruction 1/2009 would be a necessary procedure that the data controller should prepare and document conveniently. It should be borne in mind that the result of the analysis of the report could give rise to the consideration that the measure to be adopted does not pass the judgment of proportionality in order to be an otherwise intrusive measure for the rights of the persons concerned, which is not justified for the purpose of the treatment.

Regarding the principle of purpose limitation (art. 5.1.b) RGPD). Prior to the installation of the video surveillance system, the City Council must justify the purpose of the treatment (for example, because acts of vandalism have previously suffered that have damaged the municipal heritage, or that the area where the buildings are located have certain levels of public insecurity that justify the need to take measures to protect the municipal heritage, etc.) and to what extent it would mean an improvement in the security and conservation of the heritage, referring to the fact that the aforementioned purpose cannot be achieved - with other means that, without requiring disproportionate efforts, are less intrusive for people's rights.

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).

In addition, in accordance with the principle of minimization (art. 5.1.c) RGPD) the images captured by the video surveillance system must be appropriate, relevant and limited to the purpose of video surveillance.

To this end, 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 specific treatment that is to be carried out. According to the information provided, and taking into account the nature of this space, the recording of sounds would not seem justified.

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, etc.

On the other hand, and without prejudice to the considerations made from the point of view of the principle of purpose, taking into account that the City Council wants to install the video surveillance system in common areas of social housing, it is necessary to evaluate in which measure, it is possible that special categories of personal data are treated in accordance with article 9.1 of the RPDG or other personal data on which special care must be taken in their treatment, for example, with respect to minors and persons who they are in a particularly vulnerable situation, as would be the people who access social rent (due to their special economic situation, for being victims of gender violence, etc.)

Regarding the principle of limitation of the conservation period (art. 5.1.e) RGPD). The controller must take into account that the captured images must be kept in such a way that the identification of the interested parties is possible only for the time necessary to achieve 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".

Likewise, in accordance with the principle of integrity and confidentiality (art. 5.1.f) RGPD), the data controller must guarantee that the captured images must be treated in such a way that their security is adequately guaranteed, including the protection against unauthorized or illegal treatment and against its 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, it is necessary to take into account the characteristics of the system, among others:

- Complete technical conditions of the 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 a fixed or moving plane.
- 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 under certain circumstances.
- 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.
- 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.

Finally, in video surveillance treatments it is important to comply with the principle of transparency (art. 5.1.a) RGPD), in the sense of complying with the duty of information to those affected

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 people in a clear and permanent manner about the existence of cameras to guarantee knowledge of them before entering the image capture area, following the criteria of location, number, content and design established in article 12 of 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 what is foreseen the aforementioned article 12.

In relation to the right to information, it will also be necessary to analyze the convenience of making a prior communication to the administrative boards referred to in article 107.3 of Law 18/2007 of December 28, on the right to housing , in the event that these are constituted (*"In*

housing buildings with official protection under a rental regime or in another form of assignment of use, the neighbors who own a dwelling or a premises must constitute together administrators, integrated by each and every one of them, with the aim of ensuring the proper conservation and maintenance of common spaces and services, and to promote better neighborly coexistence I.

v

In addition to these considerations, the Report must 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 officer, the people at the service of the City Council who have access to the images, etc.), or as the person in charge of the treatment (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.

At this point, in relation to the specific inquiry about whether the local police can exercise control over the cameras of the video surveillance system, it must be made clear that this is an organizational and competence issue that must also analyze and determine the town hall in the corresponding report.

At the outset, given the powers that the police regulations attribute to the local police and the powers of the mayor as in charge of the top management of the local police (Article 51.1.i) TRLMRLC), this possibility could be considered.

Thus, article 11 of Law 16/1991, of July 10, on local police, and in the same sense article 53 of Organic Law 2/1986, of March 13, on Forces and Bodies of Security list the functions assigned to the local police. Specifically, article 11 of Law 16/1991 establishes:

"The local police are responsible, in their area of action, for the following functions:

a) To protect the authorities of local corporations and to monitor and guard the buildings, installations and dependencies of these corporations.

b) Order, signal and direct traffic in the urban core, in accordance with what is established by the traffic rules.

c) Instruct attestations for traffic accidents that have occurred within the urban core, in which case they must communicate the actions taken to the competent security forces or bodies.

d) Act as an administrative police, in order to ensure compliance with the regulations, of the ordinances, bans, resolutions and other provisions and municipal acts, in accordance with current regulations.

e) Act as judicial police, in accordance with article 12 and current regulations.

f) Carry out preventive measures and actions aimed at avoiding the commission of acts criminals, in which case they must communicate the actions carried out to the competent security forces or bodies.

g) Collaborate with the forces or security forces of the State and with the Autonomous Police in the protection of demonstrations and in the maintenance of order in large human concentrations when they are required to do so.

h) Cooperate in the resolution of private conflicts, when required to do so.

- i) Monitor public spaces.
- j) Provide assistance in accidents, catastrophes and public calamities, participating, in accordance with the provisions of the laws, in the execution of civil protection plans.
- k) Ensure compliance with current environmental and environmental protection regulations.
- l) Carry out actions intended to guarantee road safety in the municipality.
- m) Any other police and security function that, in accordance with current legislation, is entrusted to them."

The functions of surveillance and custody of the buildings, facilities and dependencies of local corporations, has been the subject of analysis by the courts in different judgments that conclude that these functions must be interpreted in a broad sense in relation to the municipal goods. Thus, Sentence 2706/2005 of the Superior Court of Justice of Castile and Leon, highlighted that:

*THIRD.- Article 53 a) of the Law Orgánica 2/1986 contemplates the surveillance or custody of the local police as a task buildings and facilities . Because of parte , section a) of article 6°.1 of Autonomous Decree 55/1997 provides for the monitoring and custody of buildings , facilities and others goods municipal _
Of these rules it turns out that a local policeman has assigned the attribution of surveillance and custody of goods municipals , meaning that the first watch over or attend to the care of those , while the second is the zealous or diligent guarding of those goods_ From this perspective, there is no proof procedural that demonstrates that the dependency premises of the defendant they are guarded or guarded by City Hall employees whose committed to be narrowly linked to such goods , within those surveillance and custody tasks will be including the opening and closing as something consubstantial or derived from them : *quien vigila y guarda también* will ensure the access of persons to the property or dependency on which the former activities are carried out .*

In this same sense the Superior Court of Justice of Madrid in Sentence no. 1118/2014 of December 22:

*-"In the same sense , the Sentence issued by the Superior Court of Justice of the Basque Country on May 25 , 2001 (JUR 2001, 303745) in appeal 2186/1997 (Roj : CENDOJ STSJ PV 2961/2001 - ECLI:ES:TSJPV :2001:2961) which indicates that To that effect it should be remembered that art. 53.1, a) of LO 2/86 (RCL 1986, 788) establishes that: Los Cuerpos de Policía Local must exercise the following functions : a) Protect the authorities of the Corporations Premises and surveillance or custody of them buildings and facilities .Por su part of the art. 27.1 of Law 4/92 (LPV 1992, 268) says : Local Police Bodies exercise the following functions: a) Protect the authorities of the municipalities and surveillance or custody of their buildings and facilities . Well , in view of the description of the functions contained in the legal texts mentioned and those ordered by the impugned decree can not succeed the appellant 's allegation in order to demonstrate that within the functions contained in art . 53 of LO 2/86 (RCL 1986, 788) do not include opening and closing gates , doors and other access to the buildings and facilities of municipal property , **for this purpose must to mean that what ca n't to pretend that these legal texts they collect a fear una y pormenorizadamente each and every one of the functions entrusted to the Municipal Police** ; being so , in addition , the examination of the functions described in the arts. 53 of Law 2/86, as well as those of art. 27 of Law 4/92,*

*and in which the functions to be performed are recorded , all them described , as it could not be otherwise , in a generic way , given the impossibility of specifying one by one the tasks of surveillance and custody, it is noted yes difficulty that the works entrusted by the impugned decree are nothing more than the mere development and concretion of those , contrary to what the appellant advocates. In attention to everything it must establish that, in reality , the Administration does not lack reason when , in the written response to the demand, he states that the **work of closing and opening the gates , doors and others accesses to the buildings and facilities of municipal property are found understood within the broad function of custody and surveillance of buildings and facilities of municipal property**, due conclude , in short, that not at all appears certified that the actor performs functions other than those described in art. 53.1 of Law 2/86, decaying thus the only reason for contesting the present resource _ In the same sense , the Judgment of the Superior Court of Justice of the Basque Country of April 14, 2001 (JUR 2001, 301403) issued in appeal 2184/1997 (Roj : CENDOJ: STSJ PV 2168/2001- ECLI:ES:TSJPV: 2001:2168)*

Both analyzed judgments use a generic terminology regarding the municipal assets on which these functions fall without differentiating, in principle, if they refer to public domain assets or local entities' patrimonial assets (articles 2 to 8 of Decree 336/1988, of 17 October, which approves the Regulation of the heritage of local bodies.).

In short, the data protection regulations do not prevent the city council, or, where applicable, the public company that exercises municipal powers, as responsible for the treatment, to entrust the control of the cameras of the video surveillance system to which it refer the query and for the specific purpose for which it is to be implemented, to the local police.

VI

The person responsible for the treatment must also take into consideration other issues such as those derived from the obligation to keep a record of the activities of the treatment (RAT), which must contain the information detailed in article 30, paragraph 1, of RGPD As well as the obligation to 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 (article 31.2 LOPDGDD)

Therefore, the City Council or the public management company must include in the RAT and, where appropriate, in the inventory the processing of data through the video surveillance system that is established in the terms provided for in the regulations of data protection (art. 30 RGPD and 31 LOPDGDD).

Finally , it must be taken into account that article 35.1 of the RGPD establishes the obligation of those responsible for the treatment to carry out, prior to the start of the treatment, a privacy impact assessment when it is likely that their nature, scope, context or purposes entail a high risk for the rights and freedoms of natural persons, a high risk which, according to the RGPD itself, is increased when the treatments are carried out using "new technologies".

Section 3 of the same article 35 of the RGPD, establishes that the AIPD will be required in several cases, among others, in the event that 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 there is a particularly invasive use of new technologies (remote voice recording, facial recognition, etc.), although it cannot be ruled out that it does not affect particularly vulnerable groups. 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 article 35.3 RGPD but also article 28 of the LOPDGDD and the List of types of treatment operations that must be subject 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 available on the Authority's website.

It should also be borne in mind that in accordance with article 36 of the RGPD, the person in charge of the treatment, when the result of the evaluation shows that it involves a high risk, can carry out a prior consultation with the APDCAT, so that this advice on measures to mitigate the aforementioned risk.

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.

conclusion

The installation of a video surveillance system in municipally owned buildings intended for social rent could have as a legal basis article 6.1.e) of the RGPD, justified in the powers that the local regime regulations and the regulations of housing attributes to the municipalities in matters of social housing and article 22.1 of the LOPDGDD, to the extent that the video surveillance camera system is installed in closed and delimited spaces and has the purpose of preserving the safety of people and goods, as well as their facilities.

The person in charge of the treatment must prepare a Report, in accordance with article 10 of Instruction 1/2009, describing in detail the characteristics of the treatment that is to be carried out and making the necessary weighting to determine if the measure passes the judgment of proportionality.

If the measure passes the proportionality test, the city council could order the local police to control the cameras of the video surveillance system.

Barcelona, November 10, 2022