

Opinion in relation to the previous consultation made by the data protection delegate of a city council regarding the data protection impact assessment of the installation of video surveillance cameras on the uniforms of workers in the blue zone

A preliminary inquiry made by the Catalan Data Protection Authority is presented the legal representative of the company acting as a data protection delegate of a city council in relation to the data protection impact assessment (AIPD) relating to the installation of video surveillance cameras in the workers' uniforms of the blue zone of that municipality.

The AIPD that is attached to the consultation is divided into seven sections, the first dedicated to the Introduction, the second to the description of the treatment, the third to the need to carry out the AIPD, the fourth to the necessity and proportionality, the fifth to controls to guarantee people's rights, the sixth to data security risks and the seventh to conclusions.

The result of the AIPD concludes that *"the FINAL RISK is HIGH and may pose a threat to the risks and freedoms of those concerned"*. It is also made clear that the person responsible for the treatment *"will not be able to reduce the level of risk of the treatment"*. However, consult the APDCAT about the possibility of carrying out the treatment based on the following reasons:

- Personal data will only be processed through the video surveillance cameras located on the controllers' uniforms, exclusively when situations occur in which the employees cannot guarantee their safety. The activation of the cameras will be done manually by the workers.

- The cameras will remain switched off most of the time, being activated only occasionally and necessary for the safety of the workers, adjusting exclusively to the purpose of the treatment pursued.

- The recordings of the public road will collect the minimum essential parts of it, with the main image being that of the possible aggressor. For this purpose, workers will be instructed to use the personal cameras so that they act correctly in the cases that have to be activated."

Having analyzed the consultation, which is accompanied by the contract for the services of the Data Protection Delegate of the city council and the AIPD and, in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, I issue the following opinion:

I

(...)

II

The data protection impact assessment (hereafter AIPD) that accompanies the request for the prior consultation on the data processing that is to be carried out has been analyzed, which in accordance with the description of the point 2 of the AIPD, consists in *"recording with video surveillance cameras the users who park their vehicles in the blue zones, only and exclusively when they have violent, vexatious and discriminatory attitudes towards the workers (...). The recording is not it will do so at all times with respect to the public road, but its manual activation will only be restricted at the moment when intimidating behaviors are manifested that put people's safety at risk, especially that of the workers themselves, with the cameras remaining switched off the rest of the time of time"*)

According to point 2.1 of the AIPD *"the purpose of the processing of personal data (images and voice recordings) carried out through personal video surveillance cameras will be the protection and guarantee of the safety and physical integrity of workers in the blue zone of Vilanova and the Geltrú, as well as the goods and urban facilities that may be additionally harmed"*.

At the outset, it should be made clear that the system described, insofar as it entails the recording of images and voice, involves the processing of personal data that is subject to the principles and guarantees of the personal data protection regulations, specifically , the RGPD, Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD)) and, specifically, Instruction 1/2009, of February 10, of Catalan Data Protection Agency, on the processing of personal data using cameras for video surveillance purposes, as far as it has not been modified by the RGPD and the LOPDGDD.

Beyond this, the content of the AIPD seems to indicate that in this case the person responsible for the treatment would not be the City Council but a municipal corporation.

This is relevant because according to article 36 of the RGPD who must make the prior consultation is the person responsible for the treatment.

III

First of all, it is necessary to analyze whether the treatment complies with 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. RGPD and, in the case of dealing with special categories of data in addition to any of the circumstances provided for in article 9.2 RGPD.

Point 3.1 of the AIPD identifies as the legal basis that legitimizes the treatment the legitimate interest of the person in charge of the treatment provided for in article 6.1.f) RGPD. It also refers to article 22 of the LOPDGDD.

It should be emphasized that the legal basis of the legitimate interest (art. 6.1.f) RGPD) is not automatically applied, 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 fundamental rights and freedoms of the interested party and the appropriate guarantees offered. In this regard, the criteria defined by the Working Group of Article 29 (WG 29) can be taken into account, which analyzed the application of legitimate interest in the "*Opinion 06/2014 on the concept of legitimate interest of the person in charge of data processing 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.

The AIPD lacks sufficient information regarding this weighting, such as, for example, objective data on the total number of assaults produced, the consequences of these assaults, the number of incidents that have caused damage to property and urban facilities, etc., on the one hand, and, on the other, the impact that the measure may have on the rights and freedoms of the people affected, for example the impact on users of the blue zone, the 'analysis of the expectations that the users of the blue zone may have at the time and in the specific context of the processing of their data, as well as the analysis of other measures that could be applied and that without disproportionate efforts would allow to achieve the same purpose and that they are not so intrusive for the rights and freedoms of the interested parties.

In addition, the fact that the control of the capture of the images and the voice is in the hands of the employees of the company in charge of the management of the blue zones, and therefore depends on the discretion of these can lead to significant risks for the rights and freedoms of people using the blue zone that the AIPD has not taken into account.

To the extent that the purpose indicated by the DPD is "*the subsequent use of the images collected on time with the exclusive purpose of identifying the possible aggressors and using it as evidence in the legal actions that may be taken against them*", the users of the service could find themselves defenseless as a result of this discretion in the recording (images could be provided that did not capture certain previous behaviors of the employee of the municipal company that could have produced a certain reaction from the user of the service, to put an example).

On the other hand, it must be taken into account that when choosing the legal basis on which the treatment must be based, the purpose and the context must be taken into account in order to choose the legal basis that best fits the specific circumstances of the treatment.

In any case, and since it is a case of video surveillance, it must be taken into account that article 22 LOPDGDD legitimizes the capture of images when the purpose is to guarantee the safety of people and property as well as their facilities . Thus, this article establishes:

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

2. They can only get caught images of the public road to the extent that it is essential for the purpose mentioned in the previous section .

However , it will be possible the catchment of the public road in a superior extension when was necessary to guarantee the security of goods or facilities strategic or infrastructure linked to transport , but in no case can assume the capture of images from 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 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.

(...).”
]”

In the case at hand, the fact that the recording takes place in areas of the public road intended for regulated parking by time control is of particular significance.

At this point, it should be borne in mind that article 22 of the LOPDGDD only enables the capture of images on public roads " **to the extent that it is essential for the purpose mentioned in the previous section.** "

The purpose referred to in the previous section is none other than the safety of people, goods and facilities of natural or legal persons.

In accordance with this, the legitimacy offered by article 22 LOPDGDD would not cover the capture of images of the public road to the extent that it is not accessory - in the sense that the capture of the public road is limited to the 'indispensable for the purpose of preserving the safety of people and goods in the facilities - or whether it is to guarantee the safety of goods or strategic facilities or infrastructures linked to transport.

In this regard, article 5.4.b) of Instruction 1/2009 establishes that it is not considered legitimate "to capture images of people on the public road, unless it is carried out by the forces and security 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".

Therefore, taking into account these provisions derived from article 22 LOPDGDD, it does not seem that there is a sufficient legal basis to carry out the treatment referred to in the query. This element already exempts an analysis of the rest of the content of the AIPD given that , in the absence of a sufficient legal basis, the treatment is not viable.

IV

The conclusions of the AIPD ask about the possibility of carrying out the treatment even though it entails a high risk according to the following considerations:

"Personal data will only be processed through the video surveillance cameras located on the controllers' uniforms, exclusively when situations occur in which the employees cannot guarantee their safety. The activation of the cameras will be done manually by the workers.

- The cameras will remain switched off most of the time, being activated only occasionally and necessary for the safety of the workers, adjusting exclusively to the purpose of the treatment pursued.

- The recordings of the public road will collect the minimum essential parts of it, with the main image being that of the possible aggressor. For this purpose, workers will be instructed to use the personal cameras so that they act correctly in the cases that have to be activated."

At the outset, it must be said that these circumstances could be taken into account when analyzing the proportionality of the treatment for the purposes of verifying compliance with the minimization principle. However, they cannot make up, in any case, for the lack of legal basis that has already been exposed.

In any case, in the treatment described, it cannot be said that the capture of the public road is incidental given that the recording of the images occurs precisely in the parking areas on the public road. Therefore, even if it is recorded only on a timely basis and mainly capturing the alleged aggressor, this treatment is done in public and there is a high risk of capturing images not only of people who may be alleged aggressors but also of any other person or vehicle driving there.

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 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.

This regulation, which allows the capture of images from public roads, is limited to 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."*

Article 17 of the aforementioned Law 7/2021 regulates the use of mobile devices (such as those analyzed in the presented AIPD), which can be used to capture images and sound, for the purposes provided for in that law and in accordance with the specific powers of the security forces and bodies. The use of these mobile devices is subject to prior authorization by the person in charge of the Government Delegation or sub-delegation or the corresponding bodies of the autonomous communities.

Mention should also 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 public spaces by entities other than the Security Forces and Bodies.

Specifically, article 42 provides,

"1. The video surveillance services consist of the exercise of surveillance through camera systems or video cameras, fixed or mobile, capable of capturing and recording images and sounds, including any technical means or system that allows the same treatments as these.

*When the purpose of these services is to prevent infractions and prevent damage to persons or goods subject to protection or to prevent unauthorized access, they **will necessarily be provided by security guards or, as the case may be, rural guards.***
(...)

*2. 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 under the terms and conditions provided for in its specific regulations , **prior administrative authorization by the body competent 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 of the LSP must be met, that is to say, that it must be carried out by security guards (or in their case rural guards) and that it is done with the corresponding authorization, under the terms and conditions provided for in the specific regulations.

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"*.

In the case at hand, the person responsible for the treatment is the municipal company in charge of managing the blue zone and it is expected that the system will consist of *"body camera devices"* that will be placed on the uniforms of the company's workers that control the blue zone through the corresponding fastening systems. These workers are not part of the police forces or security guards of a private security company or rural guards. Consequently, with regard to the treatment described in the AIPD, the municipal company

would not be legitimate to install the intended surveillance system, given that it would involve the capture of images from the public road.

For all this,

conclusion

The processing that is the object of the AIPD submitted would go against what is established by the RGPD, given that the person responsible for the processing does not have a legal basis that legitimizes video surveillance on public roads.

Barcelona, November 16, 2022

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