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File identification File resolution of
prior information no. IP 254/2018, referring to the City Council of (...).

Background

1. On 04/09/2018, the Catalan Data Protection Authority received a letter from a person who lodged a complaint against the City Council of (...), on the grounds of an alleged non-compliance with the regulations on the protection of personal data. In particular, the complainant stated that a "dome-type" camera would have been installed on the facade of the Local Police offices, which would allow the recorded images to be recorded. The complainant added that a device that would capture images of public places had also been installed in the Local Police vehicle.

The rest of the facts reported, consisting of the lack of authorization to capture images of public places through a camera installed on the facade of the police stations and the lack of placement of the informative posters of this camera, are the subject of imputation in the sanctioning procedure that has been initiated.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 254/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.
3. In this information phase, on 13/11/2018 the Authority carried out an inspection at the premises of the Local Police, to verify the reported aspects. In that face-to-face inspection, the representative of the City Council stated the following, in relation to the complaint about the camera installed on the facade:

- That following an incident at the police offices, a camera was installed on the facade of the City Hall that focused on the access door to the offices.
- That since this system was not efficient, after two weeks (approximately the month of August), the camera was replaced by a video intercom installed at the access door.

Carrer Rosselló, 214, esc. A, 1st 1st
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- That the camera that was initially installed on the facade, with video intercom functions, was decided to be installed by the head of the accidental Local Police (the representative of the City Council in this inspection act).
- That the purpose was to control access to police stations.
- That the images captured by the initial camera installed on the facade allowed the identification of physical persons.
- That this camera did not capture images continuously, but only occasionally. In this respect, to view these images captured on time, it was necessary to do so through a mobile device, through the corresponding application.
This device was automatically locked after a period of inactivity. The device was activated by the local police officer when someone wanted to access the police offices.
- That the images captured by the camera installed on the facade were not recorded.
- That the Local Police officers could access the images captured by the video surveillance system through the tablet, in real time, in the public service room of the police stations. The tablet was facing the position of the Local Police officer.

And in relation to the complaint about the installation of a device in the police vehicle that would allow the capture of images, the municipal representative stated the following:

- That in the local police vehicle (there is only 1), none is installed camera
- That in relation to the images shown by the inspecting staff (photographs provided by the complainant) of the interior of this vehicle, it is unknown what the device is that is stuck with a suction cup to the front glass.

Likewise, the Authority's inspection staff verified, among others, the following:

- That it was no longer installed on the facade of the Local Police offices the camera subject to complaint.
- That there is no interior camera in the Local Police vehicle.

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

2. Based on the account of facts that has been presented in the background section, it is necessary to analyze the facts denounced

2.1. About the device installed in the police vehicle

The complainant stated that a camera had been installed on the front of the Local Police vehicle that would focus on the public road and allow the capture of images.

Regarding this, in the on-site inspection carried out by the Authority's inspector staff on 11/13/2018, it was expressly verified that there was no camera inside the police vehicle. It is worth noting that the person making the complaint brought along with his complaint some photographs of the controversial device, which this same person had taken from inside and outside the vehicle. Specifically, it is inferred that this device would be a camera for vehicles, which would allow images to be recorded.

In relation to this device, the representative of the City Council at the inspection event stated that he did not know what the device was that was observed in the photographs on the front window of the police vehicle. So things are, we are facing a mobile device that can be installed and uninstalled in a simple way (the device is attached to the front glass of the vehicle through a suction cup and is powered by the battery of the charger of the car), so it cannot be ruled out that it had been installed on an ad hoc basis by some agent, without there being evidence that it was a decision adopted or authorized by the City Council.

In any case, beyond the photographs provided by the complainant, in the present case there is no evidence that said device was used by the City Council to capture images of identified or identifiable natural persons. Therefore, as there is no record of any element attesting that such treatment had been carried out, such a circumstance would prevent the application of the regulations on data protection.

As things stand, it must be concluded that in the investigative actions carried out, it has not been possible to verify whether any processing of personal data was carried out by means of that device. Consequently, the principle of presumption of innocence is applicable here given that it has not been possible to prove the existence of evidence of infringement and therefore administrative responsibility cannot be demanded. This principle, which is included in article 53.2.b) of the LPAC, recognizes the right "To the presumption of non-existence of administrative responsibility until proven otherwise".

The above circumstance makes it unnecessary to address the rest of the issues that were reported regarding the controversial device (authorization, recordings and posters

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08008 Barcelona

informative). However, it should be remembered what would be the regime applicable to this device in case the City Council wanted to install it in the Local Police vehicle. First of all, article 4.2 of Instruction 1/2009, of February 10, of the Catalan Data Protection Authority, on the processing of personal data through video surveillance cameras, determines the following:

"4.2. The processing of personal data from images and voices obtained through the use of video cameras by the police of the Generalitat-mossos d'esquadra or by the local police of Catalonia must be governed by their specific provisions and by what is specifically foreseen, if applicable, in the personal data protection legislation and for this Instruction."

And in line with the above, article 5.4.b) of Instruction 1/2009 does not consider legitimate:

"b) The capture of images of people on public roads, unless it is carried out by the forces and security bodies in accordance with their specific regulations. The incidental capture of images from the public road for the surveillance of buildings or facilities is only legitimate if it is unavoidable to achieve the purpose of monitoring the building or facility."

This specific regulation to which Instruction 1/2009 refers is constituted by Organic Law 4/1997, of August 4, which regulates the use by Citizen Security Forces and Bodies in public places, deployed in Catalonia by Decree 134/1999, of 18 May, regulating video surveillance by the police of the Generalitat and the local police of Catalonia and 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.

Well, these rules only allow the capture of images in public places - open or closed - by the Security Forces and Bodies with the following purpose: "to ensure citizen coexistence, the eradication of violence and the peaceful use of roads and public spaces, as well as preventing the commission of crimes, misdemeanors and infractions related to public safety." (art. 1 of Organic Law 4/1997).

This, as long as and when authorization has been obtained from the competent body (Directorate General of Security Administration of the Department of the Interior), previous favorable report of the Commission for the control of video surveillance devices.

In the present case, the doubt could arise as to whether the cameras installed in police vehicles, which capture images of public places, are fixed or mobile.

In this regard, Organic Law 4/1997 provides that in the authorization of fixed cameras it is necessary to specify the physical scope capable of being recorded and that the resolution must refer to the specific case that must be the subject of observation of the cameras (article 3.4). In turn, Decree 134/1999 also provides that in the corresponding request (art. 8.1) and in the resolution (art. 9.1) for authorization to install fixed video surveillance devices, it must be specified the location of the physical area liable to be recorded.

For the case of a camera installed on the front of a police vehicle, it must be taken into account that the physical space recorded will not always be the same. That is why it is inferred that we would be in front of mobile cameras.

Regarding the authorization regime for mobile video cameras by the police of the Generalitat-mossos d'esquadra and local police, sections 1 and 2 of article 12 of Decree 134/1999 provide the following:

"12.1. In cases of public disorder and, in general, of specific danger to public safety, authorization will be granted for the use of mobile equipment for recording images and sounds, with the same objectives set by the article 10, to the general director of Citizen Security, on his own initiative or at the request of the higher command of the body or of the top manager of each police region of the police force, or of the mayors with regard to the local police of the respective municipalities.

12.2. In cases of utmost urgency and whenever the circumstances of the case prevent the mandatory authorization being obtained in time or when it comes to roads or public places where the installation of fixed video cameras has been authorized, the higher command of the body, the head of the corresponding police region or the mayor, respectively, may order the use of mobile video and sound recording equipment. The chief of police or the mayor who has ordered its use will inform immediately and, in any case, within the maximum period of seventy-two hours, the general director of Citizen Security and the Commission for Control of the Devices of Video surveillance."

In this sense, it is worth saying that in accordance with what is established in the third section of the third additional provision of Decree 320/2011, of April 19, restructuring the The Department of the Interior provides that "The references to the Secretary of Security and to the Director General of the Police contained in Decree 134/1999, of May 18, regulating video surveillance by of the police of the Generalitat and of the local police of Catalonia and in Decree 78/2010, of 22 June, on the installation

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of video surveillance devices in the police departments of the Generalitat, are understood to be carried out by the Director General of Security Administration."

Also, in the event that the mentioned camera is installed in the police vehicle to capture images of the public road for the purpose of traffic control, it is necessary to take into account the provision in additional provision 2a of the same Decree 134/1999 :

"2.1 The police of the Generalitat-mosses d'esquadra and the local police will install video cameras and any other means of capturing and reproducing images and will use them for control, regulation, surveillance and traffic discipline on public roads subject to the regulations included in additional provision 8 of Organic Law 4/1997, of August 4, which regulates the use of video cameras by security forces and bodies in places public, and to this Decree.

2.2 The competent authorities to order the installation and use of the devices referred to in the previous section are:

On public roads where traffic regulation is not attributed to the municipalities, the director of the Catalan Traffic Service in the territory where the police officers exercise this competence.

In public roads under the jurisdiction of the municipalities, the mayor of the respective municipality."

It is for all this that, as will be indicated later, a warning should be issued to the City Council of (...).

2.2. About the recordings of the camera installed on the facade of the outbuildings

police officers

The complainant questioned where the images captured by the video surveillance camera installed on the facade of the police offices were stored.

In this regard, the representative of the City Council (...) during the inspection stated that the images captured by said camera were not recorded. In fact, it will be seen that images were only captured intermittently, and specifically, when someone wanted to access the police offices.

In this sense, it should be taken into account that the inspection staff could not verify such extreme, given that the City Council had removed the controversial camera prior to the on-site inspection.

As things stand, the principle of presumption of innocence also applies here, given that it has not been possible to prove the existence of evidence of infringement.

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3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the previous information it has not been proven that there are rational indications that allow imputing any fact that could be constitutive of any of the violations provided for in the applicable legislation, it is necessary to agree on the archive of these actions.

Article 89 of the LPAC, in line with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when in the instruction of the procedure clearly the following: "b) When the facts are not proven; (...) d) When the person or persons responsible does not exist or has not been able to be identified or appear exempt from responsibility".

4. Article 58.2.a) of Regulation (EU) 2016/679 of the Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement of this data and which repeals Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD), empowers the control authorities, in the exercise of their corrective powers, in order to issue a warning to the person in charge, if the planned treatment operations may infringe the provisions of the RGPD.

It is by virtue of this faculty that, despite the archive decision based on the arguments expressed above, it is considered appropriate to warn the City Council of (...) that the capture of images of public places through a camera installed in the police vehicle, will require that it conforms to what is foreseen by the police video surveillance regulations, and in particular, to article 12 and/or additional provision 2a of Decree 134/1999.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 254/2018, relating to the City Council of (...).
2. Warn the City Council that the eventual installation of a camera in the police vehicle that captures images, without complying with the provisions of the police video surveillance regulations, could infringe the regulations on personal data protection.
3. Notify this resolution to the City Council of (...) and communicate it to the person reporting
4. Order the publication of the resolution on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

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Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the which provides for article 123 et seq. of Law 39/2015. You can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)