

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

File identification

Archive resolution of the previous information no. IP 55/2020, referring to the City Council of Cornellà de Llobregat.

Background

1. On 11/02/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Cornellà de Llobregat City Council, on the grounds of an alleged breach of the regulations on personal data protection. In particular, the complainant stated that the City Council did not properly exercise the right to information regarding the processing of images through the device installed in the municipality of Cornellà de Llobregat, in the roundabout located between the Passeig dels Ferrocarrils Catalans and the Carretera del Prat de Llobregat (device that checks that a sign prohibiting entry to the Carretera del Prat de Llobregat from the roundabout is respected). The person reporting considered that the City Council did not inform about the following: the existence of said camera, the data of the data protection delegate, the legitimacy of the treatment, the purpose, the recipients of the data, the possibility of exercising the rights, nor did it identify the company that would manage the video surveillance camera.

In turn, the complainant also stated that the Cornellà de Llobregat City Council had addressed a traffic violation complaint (file (...)) using the name "Joana", although "many years ago it changed Joana's name for Janet."

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

2. The Authority opened a preliminary information phase (no. IP 55/2020), 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 02/13/2020, the representative of the person reporting was requested to certify that the name of the person reporting had been corrected (Joana by Janet) in the records of the General Directorate of Traffic (hereinafter, DGT); as well as to provide a copy of the reporting person's driver's license.

4. On 02/13/2020 he received an email from the representative of the person making the complaint in which he indicated the following:

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

- That "the name of Ms. (...) in the Barcelona register and the Civil Registry (change of name). But in no case (unless there is a mistake) in the Provincial Council."
- That the complainant has a certain pathology that does not allow him to drive, which is why he considered it unnecessary to provide a copy of his driver's license.
- That Janet's name appears on the driver's license.
- That the DNI (of which a copy was provided) also shows her correct name (Janet).

In his e-mail, the representative of the person making the complaint informed that in a short period he would provide a copy of the driver's license. However, as part of this prior information, neither the copy of the complainant's driver's license was provided, nor was it proven that the complainant's name had been changed in the DGT's records.

5. On 04/06/2020, the reported entity was required to certify how it provided the people affected by the processing of images through the device subject to the complaint, information on the rest of the ends provided for in the article 13 of Regulation (EU) 2016/679 of the European 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 thereof (hereinafter, RGPD) ; as well as in order for him to certify what the name of the person making the complaint was, which was in the DGT records, when the complaint was made for disobeying a no-entry sign on 01/25/2020.

This requirement was reiterated on 07/25/2020.

6. On 07/31/2020, the Cornellà de Llobregat City Council responded to the request mentioned through a letter in which he set out, among others, the following:

- That in the location where the camera is the object of the complaint, the City Council had placed two informative signs of the prohibition of access to the road during specific intervals of time.
- That one of the signs indicates that access is controlled by capturing images.
This sign would conform to the provisions of article 12.8 of Instruction 1/2009, of February 10, on the processing of personal data through video surveillance cameras (hereinafter, Instruction 1/2009).
- That the treatment is legitimate in the fulfillment of a mission in the public interest or the exercise of public powers (art. 6.1.e RGPD).
- That the City Council includes in all the forms a clause that indicates the procedure for exercising the access rights of those affected. The electronic office is also informed of this possibility (https://suelectronica.cornella.cat/portal/contenedor.do?det_cod=20&ent_id=1&idioma=2).

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

- That it is possible that this information can be expanded, considering video surveillance cases. To this end, the City Council provides, along with its letter, a text that it proposes to incorporate into its electronic headquarters, under a specific subsection called 'If you want to specifically consult the video surveillance treatments carried out by the City Council, click here'. The City Council states that it would provide this information once the Authority has validated it.

- That City Council complaints are processed through a certain application and the Catalan Traffic Service database (hereafter, SCT) is used, managing the process through the means of management of the Provincial Council of Barcelona. The name in the complaint (Joana) is the one provided by the Catalan Traffic Service database, based on the information obtained from the vehicle registration.

The reported entity attached various documentation to the letter.

7. On 08/11/2020, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that in the section of the electronic headquarters that identified the Cornellà de Llobregat City Council in its letter of 07/31/2020, the information on data protection that was provided did not refer specifically to the processing of images using cameras for video surveillance purposes. Specifically, it was verified that the information provided was related to the treatment for the purpose of processing the requests made before the City Council.

8. On 09/08/2020, also during this preliminary information phase, the SCT was requested to report on whether the information contained in its database regarding the ownership of the vehicles, is obtained from the records of the DGT; if on 01/25/2020 (the date of the traffic violation complaint) the owner of the vehicle with registration (...) was listed in the database as "Joana" or "Janet"; as well as if there was any change in the database in relation to the name and surname of the person who owns the said vehicle.

9. On 09/28/2020 the SCT's response to the previous request for information was received. In its letter, the SCT reported the following:

- That the SCT obtains the information contained in its records regarding the ownership of vehicles from the DGT. The database corresponds to the DGT.
- Since it is not an own database, you cannot check the name that it was on date 25/01/2020 of the owner of the vehicle.
- That the SCT does not have access to the historical database on vehicle ownership. It only accesses the personal data of the holder on the date of the query.
- That as of 09/17/2020 the owner of the vehicle is listed as "Janet".

By official letter of 09/28/2020, the Traffic Prefecture reported that on 25/01/2020, the owner of the vehicle with registration (...)

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

she was listed in the DGT records as "Joana" or "Janet"; as well as if there was any change in the database in relation to the name and surname of the owner of the said vehicle from 01/25/2020.

11. On 14/10/2020 he received the response from the Provincial Traffic Prefecture of Barcelona, in which he reported the following:

- That in the Register of drivers and offenders and in the Register of vehicles, both owned by the DGT of the Ministry of the Interior, he is listed both as the owner of the vehicle (...) and as the holder of a driving license, the reporting person with the name "Janet".
- That once a person's affiliation change is processed, it is not preserved in the its records the previous affiliation.

12. Based on the antecedents that have been related and the result of the investigative actions carried out in the framework of the previous information, on today's date an agreement to initiate disciplinary proceedings regarding the information is also issued complementary information that must be provided regarding the processing of video surveillance for traffic control purposes, in the terms provided for in article 12.6 of Instruction 1/2009.

The rest of the behaviors reported are addressed in this file resolution.

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.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

2.1. About the existence of the camera.

First of all, the complainant stated that the Cornellà de Llobregat City Council did not inform about the existence of the camera that was the subject of the complaint.

Both the complainant and the Cornellà City Council have provided photographs of a sign located at the exit in the direction of Carretera del Prat de Llobregat from the previously identified roundabout. This poster informs about the "photographic control".

Well, this informative poster of the camera's existence, at its discretion Authority, is clearly visible and guarantees its knowledge by the people affected.

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

Regarding the content of the poster, it is necessary to go to what is established in article 12.8 of Instruction 1/2009, which determines the following:

"12.8. In fixed cameras for the control, regulation, surveillance and discipline of traffic on public roads, the content of the sign may be limited to reporting the existence of the camera or speed control device, without prejudice to the that establishes section 6 of this article."

In accordance with the above, when the specific purpose of video surveillance is traffic control, the informative poster of the existence of the cameras can be limited to informing about the existence of the cameras. Therefore, the Cornellà de Llobregat City Council reported the existence of the camera in accordance with article 12.8 of Instruction 1/2009.

2.2. About the company that would manage the camera.

Subsequently, the person making the complaint also stated that the City Council did not provide information about the entity that would manage the video surveillance camera, although it did not provide any evidence that a company managed it.

Having said that, in the event that there was indeed a company that managed said camera, this would be considered a data controller, a figure that the RGPD defines as the natural or legal person, public authority, service or any other body that treats personal data on behalf of the controller (art. 4.8 RGPD).

At this point, it must be decided whether the person in charge of the treatment must provide information about the identity of the person in charge of the treatment.

Article 13.1.e) of the RGPD establishes that the interested person must be informed about the recipients or categories of recipients of the personal data, if applicable.

Therefore, it is appropriate to address whether the person in charge of the treatment is a recipient. Article 4.9 of the RGPD considers the recipient to be the natural or legal person, public authority, service or any other body to which personal data is communicated, whether it is a third party or not.

For its part, article 33.1 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter, LOPDGDD), regarding the person in charge of the treatment determines the following:

"1. Access by a processor to personal data that is necessary for the provision of a service to the controller is not considered a communication of data as long as the

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

they establish Regulation (EU) 2016/679, this Organic Law and its implementing rules.”

Given the above, since access to personal data by the person in charge of the treatment is not considered data communication, this cannot be considered as a recipient of the data (which is the one to whom the data is communicated). By not having the consideration of recipient, it cannot be required that when the right of information is effective, the person in charge identifies the person in charge of the treatment.

2.3. On the accuracy of the name of the reporting person.

Finally, the complainant also stated that the complaint from the Cornellà de Llobregat City Council for a traffic violation had been addressed using the name of "Joana", although "many years ago she changed the name of Joana to that of Janet." That is to say, that the reporting person considered that the data relating to his name had not been treated accurately.

In advance, it should be noted that article 90 of Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on traffic, motor vehicle circulation and road safety (hereinafter, RDL 6/2015) provides that the practice of notifications of complaints in traffic matters, in the event that the person complained of does not have an electronic road address and has not expressly designated an address for the procedure, have to be done at the address stated in the DGT records.

In cases where the data controller obtains the personal data from a public register (such as the DGT records), the possible inaccuracy of the personal data included there would not be imputable to the City Council in accordance with the article 4.1.d) of the LOPDGDD.

In the context of this prior information, this Authority requested the representative of the person making the complaint to certify that the name of the person making the complaint had been rectified (Joana by Janet) in the records of the DGT, which did not will be credited He also knows request to provide a copy of the reporting person's driver's license, but this documentation has not been provided even though the reporting person's representative stated that it would be provided in a short period of time.

At the request of this Authority, the Cornellà de Llobregat City Council has informed that the name that appeared in the complaint (Joana) is the one that appeared in the SCT database.

In turn, the SCT has informed that its database is fed by the information contained in the records of the DGT and that, not being its own database, it could not consult the vehicle ownership history.

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

For its part, the Provincial Traffic Prefecture of Barcelona has informed that on the date on which it received the request for information formulated by this Authority (02/10/2020), in the Register of drivers and offenders and in the Vehicle Registry, it was stated as the owner of the vehicle (...) and as the holder of a driver's license, the person reporting under the name of "Janet".

However, the Provincial Traffic Prefecture of Barcelona pointed out that it did not know from which date the person making the complaint had rectified his name in said records, given that the previous affiliation was not preserved in them.

As things stand, in the present case it cannot be ruled out that the person reporting here had requested the rectification of his name that appeared in the records of the DGT after 01/25/2020 (date of the complaint for violation of circulation).

Consequently, the principle of presumption of innocence is applicable here since, to the best of his ability, the person reported here has not provided supporting documentation of the reported inaccuracy; as well as due to the fact that the investigative actions carried out in this previous phase have not made it possible to determine indications of the existence 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".

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the violations provided for in the legislation on data protection, should be archived.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 55/2020, relating to the City Council of Cornellà de Llobregat regarding the lack of information about the existence of the controversial camera and the company that would manage it; as well as on the inaccurate treatment of the name of the reporting person.
2. Notify this resolution to Cornellà de Llobregat City Council and the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

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

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 persons interested parties may file, on an optional basis, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly 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, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,