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File identification

Archive resolution of the previous information no. IP 307/2020, referring to Ferrocarril Metropolitana de Barcelona, SA.

Background

1. Between 08/10/2020 and 14/10/2020, by referral from the Spanish Data Protection Agency (hereafter, AEPD), the Authority received a complaint from a certain trade union against Ferrocarril Metropolitana de Barcelona, SA (hereinafter, FMB),

Specifically, the complainant union explained that from the Security and Protection Centre Civil of FMB (hereinafter, CSPC) captured the images of suspected offenders (in some cases, minors), collected by the video surveillance cameras installed in the subway network, which were printed (printers) and were distributed among the security personnel. In this sense, the reporting entity provided 2 "printers" or relative impressions to the same person (the reference contained in these prints was the following: (...)).

The complaining union pointed out that this treatment was carried out without the consent of the people affected and without the right to information being effective; as well as that the images captured by the video surveillance system would be kept for more than a month.

On the other hand, the reporting entity highlighted that the facts reported could contravene the fundamental right to self-image regulated by Organic Law 1/1982, of May 5, on civil protection of the right to honor, in personal and family privacy and one's own image (hereinafter, LO 1/1982); that Article 4 of Organic Law 1/1996, of January 15, on the legal protection of minors, partially amending the Civil Code and the Civil Procedure Law (hereinafter, LO 1/996); as well as article 17.1 of Regulatory Law 5/2020, of January 12, on the criminal responsibility of minors (hereinafter, LO 5/2020). In turn, he also considered that certain behaviors could constitute, in his opinion, a crime (specifically, the crimes classified in articles 163, 165, 166 and 197 of the Penal Code).

Aside from the above, the reporting entity claimed that TMB had not appointed a data protection officer (hereinafter, DPD).

The reporting entity provided other documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 307/2020), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to areas of competence of the Generalitat, and article 55.2 of the

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Law 39/2015, of October 1, on the common administrative procedure of public administrations (from now on, LPAC), to determine whether the facts were likely to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 10/26/2020, the Authority's Inspection Area checked the Authority's DPD Register, which FMB registered on 10/02/2019 the appointment of its DPD in said Registry (subsequently, FMB communicated that it had appointed a new DPD on 02/03/2021).

4. On 30/10/2020, FMB was required to report whether it was the entity responsible for the processing consisting of capturing, printing and distributing the images subject to complaint among the security personnel, collected by the video surveillance system installed in the metro network. And, in his case, he was also required to point out what was the legal basis that legitimized the treatment object of complaint, how the right to information was made effective and what was the retention period of the images captured by the installed video surveillance system - side of the metro network, among other extremes.

5. On 10/11/2020, FMB responded to the aforementioned request through a letter in which it set out, among others, the following:

- That FMB was not responsible for any processing consisting of capturing, printing and to distribute among the security personnel, the images collected by the video surveillance system installed in the subway network, referring to persons allegedly infringing.
- That the treatment of the images captured by the FMB video surveillance system aims to preserve the safety of people, property and facilities, in accordance with article 22 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).
- That in the event that, based on the images processed by the video surveillance system, the commission of alleged crimes or administrative infractions that generate a risk for the safety of people, goods or facilities is verified, this treatment is done within the framework of article 22 of the LOPDGDD. The legal basis that legitimizes the treatment it is the public interest.
- That the video surveillance system has an automatic deletion mechanism, which it is activated when the captured images reach the maximum term of one month.
- Given that the installations where the images are captured are a critical infrastructure, and violations can endanger people's lives, there are exceptions in which selected images are kept for a longer period of time. On these cases, the deadlines are variable and depend on the seriousness of the facts and the level of cooperation requested by the judicial or police authorities.

6. On 11/12/2020, also in the context of this prior information phase, a new request was made to FMB in order for it to report, among others, on whether the people who

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they could view the images captured by the metro's video surveillance system were FMB's own staff and/or staff from the security company; as well as how the affected persons were provided with information on the other aspects established in article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD).

7. On 11/20/2020, FMB responded to the previous request through a letter in which it stated, among others, the following:

- That the people who can view the images captured by the metro's video surveillance system, in real time or recorded, are own authorized personnel and personnel of the person in charge of the treatment (security company).
- That in the stations and on the trains there are informative posters about the existence of the cameras. The warning is also given over the public address system of the facilities.
- That FMB and its DPD became aware, following the request for information formulated by the Authority, that in some special cases, within the main treatment of video surveillance and the purposes of protecting the safety of people, goods and the facilities, using the authorized persons with a duty of confidentiality, and within the 30 days provided for by the treatment, some images captured by the cameras had been printed.
- That in the specific case of the captures provided by the reporting entity, it was a special case in which the person identified as the alleged author of uncivil acts had a violent response towards an FMB cabin employee, which he insulted and threatened. Employees do not tend to report these types of crimes for fear of reprisals, but they also end up suffering the consequences of the administrative complaints that are presented as they cannot pursue the facts in their criminal courts, since these are crimes that can only be they can pursue at the instance of the affected party. This risk of aggression forced the application of a protocol to protect this employee, who was left alone in the cabin during the night shift.

FMB provided various documentation.

8. Still within the framework of this information phase, on 04/12/2020 the Inspection Area of the Authority carried out the following checks:

- The e-mail address contained in the information notice about the existence of the cameras (tmb.cat/ca/politica-privacyt) provided by FMB was accessed, which led to TMB's data protection policy ([tmb.cat/ca/politica-proteccio-data personals](mailto:tmb.cat/ca/politica-proteccio-data-personals)).
- In the "Video surveillance and voice treatment" section of the data protection policy, the affected persons were informed that they could consult the video surveillance and voice treatment by clicking on a link.

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- This link led to a TMB website (<https://www.tmb.cat/ca/tractament-gravacions-videovigilancia-i-veu>) in which information was provided, in relation to video surveillance and voice treatments, about the identity of those responsible for the treatment, the rights that the affected persons can exercise, the contact details of the data protection delegate and the possibility of submitting a claim to the Authority. On this page, the person interested was also invited to consult the video surveillance activity within the record of treatment activities (hereafter, RAT) by means of a link.
- This last link led to the "Video surveillance" processing activity incorporated in the RAT (<https://www.tmb.cat/ca/registre-activitatis-tractament-dades-personals#25>). There, information was provided on the type of interested parties and personal data, the purpose, legitimation, communication of the data, conservation, international transfers and security measures.

9. On 04/12/2020, a third request was made to FMB in order for it to identify the specific entity that would be responsible for the capture of images subject to a complaint.

10. On 12/16/2020, FMB responded to the previous request through a letter in which it stated, among others, the following:

- That the Security and Civil Protection coordinator, an employee of the FMB Security Department, was the one who decided to capture the images that have been taken so far.
- That this person decides whether, in relation to the seriousness and impact of the criminal acts, service devices must be established to prevent new serious acts or locate and identify the perpetrators of the acts that have already occurred and been reported.
- That this person is in charge of the functional direction of the contracted private security services.
- That materially, the image capture was done by the security operator (employee of a security company), but under the decision of the security coordinator.
- That the incident referred to in the arrest that is the subject of a complaint, consisted of a situation of fear suffered by an employee of FMB who provided services at the station of (...), due to a user that hit the premises and threatened the employee at 02.37 on a night from Saturday to Sunday. For this fact, and given that the person employed by FMB did not want to file a criminal complaint for threats, the security guards identified and administratively reported the user with the support of the Mossos d'Esquadra, for committing fraud and violently beating the facilities
- That the employees provide services at the stations alone and that, when they have to manage situations of this kind, they usually do not report the facts for fear of new threats or serious situations for their physical integrity.
- That in the face of this situation, and due to the impact that the employee suffered, the Security and Civil Protection coordinator decided to set up a device to prevent new situations with the same user that could pose a danger to the integrity of that person employed by FMB.

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- That in order to facilitate the recognition of the person who represented this risk, and to be able to react preventively with greater agility, identification "printers" were provided to the established security service [provided by security guards].
- That these "printers", from which a single impression was made, were handed over directly to the service manager of the security company of (...).
- That said device was set up the day after the events (on 17/11/2019) and for a week [FMB provided the screenshot of a "Registros" computer application, which states that a device was organized security for prevention between 17/11/2019 and 24/11/2019 in relation to the user who had hit the subway cabin. The reference contained in this record -(...)-, matches the one that appeared in the prints or "printers" provided with the complaint].
- That the security company cannot carry out any action that goes beyond the service it has been entrusted with. If the security company has made any printing on paper, it has been exclusively following the instructions of the coordinator of Security and Civil Protection, an employee of the Security Department of FMB.

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.

In advance, it should be made clear that it is not up to this Authority to pronounce on possible non-compliance with LO 1/1982, LO 1/1996 or LO 5/2020. In turn, this Authority is also not competent to rule on the alleged commission of criminal offences.

Therefore, this resolution will only address if the facts reported contravene the regulations for the protection of personal data. These reporting facts are then analyzed separately.

2.1. About the lack of DPD.

In its letter of complaint, the complainant union explained that TMB did not have a data protection officer in its control centre.

Well, the data protection regulations do not require the DPD to be present in a certain office, as the reporting entity claims.

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Having said that, as indicated in precedent 3, in the investigations carried out in the preliminary information phase it was found that on 02/10/2019 (prior to the complaint presented to the AEPD on 17/02/2020), FMB notified the DPD Registry of the APDCAT of the appointment of its DPD. Therefore, at the time the complaint was made, FMB had appointed a DPD contrary to what the complaining entity claimed.

2.2. About the prints of the images captured by the cameras.

The reporting entity pointed out that from the CSPC of FMB the images of the alleged offenders (in some cases, minors) were captured, collected by the video surveillance cameras installed in the metro network, which were printed (through "printers") and were distributed among the security personnel.

Although FMB had initially denied that it was responsible for the impressions of the images captured by the cameras, it has finally admitted that these were made following the instructions of the coordinator of Security and Civil Protection (employee of FMB).

Having established the above, in the framework of the previous actions FMB has also informed that the purpose of the processing of images through the cameras installed in the metro network is to preserve the safety of people, goods and facilities locations FMB is responsible for this treatment.

In this sense, it has been established that this purpose is the same as that listed in the RAT, for the "video surveillance" processing activity. The RAT can also be reached from the electronic address that appears on the information posters about the existence of the cameras, for the purposes of providing additional information about said treatment.

Having said that, it should be borne in mind that this treatment is based on the fulfillment of a mission in the public interest (art. 6.1.e RGPD) in accordance with article 22.1 of the LOPDGDD, which provides that "Physical persons or legal entities, 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."

In fact, the LOPDGDD contemplates in its statement of reasons that the legality of video surveillance treatments comes from the existence of a public interest.

So things are, the capture of images by means of cameras through the aforementioned purposes, is a lawful treatment. And this conclusion is not altered by the fact that the affected persons may be minors.

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Having established the above, it is necessary to decide whether the prints or "printers" of the images captured by the cameras installed in the metro network are suitable for the purpose that motivated the collection of the data (the safety of people, goods and facilities).

FMB has explained that the prints or "printers" provided by the reporting entity (they included the same person and reference -(...)-) are related to an incident involving a person using the metro on 11/16 /2019, who would have shown a violent attitude towards the subway driver who provided his services in the railway cabin, to the point where he threatened him as reported by FMB.

The reported entity justifies that in order to guarantee the safety of this worker, a preventive security device was organized in case the user responsible for the incident were to access the Barcelona metro facilities again. To this end, a printout was made of the images of said user captured by the video surveillance cameras, prints that were distributed among the security staff of the affected metro line ((...)), for the purposes that the security staff could quickly recognize that person if they re-entered the facilities of the mentioned metro line.

Well, the reported processing of personal data (the impressions of the images captured by the cameras) also has as its purpose the safety of people, so the principle of limitation of the purpose would not be infringed (art. 5.1 .b RGPD), which states that personal data must be collected for specific, explicit and legitimate purposes and subsequently must not be treated in a manner incompatible with these purposes. In turn, it should be noted that this measure was adopted on an exceptional basis and that it was motivated by the existence of clear indications of a situation that could pose a serious risk to the safety of a working person.

In general, however, you should avoid implementing this measure consisting of printing the images captured by the security cameras, unless it is justified that this is necessary for the security personnel to be able to identify a suspicious person.

With regard to the conservation period, it is worth saying that in the field of treatments for purposes of video surveillance, the LOPDGDD provides that the images must be deleted within a maximum period of one month from their capture, except when they must be preserved to prove the commission of acts that threaten the integrity of people , goods or facilities.

In the present case, it should be noted that the security device in the framework of which the prints of the images captured by the video surveillance cameras were used, started the day after the incident that took place (on 17/11/2019) and ended after a week (11/24/2019). Therefore, this treatment took place within the 30-day retention period contemplated by FMB in the RAT for the "video surveillance" treatment activity (the

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which conforms to art. 22.4 LOPDGDD), so that the principle of limiting the data retention period was not breached (art. 5.1.e RGPD).

Indeed, within the framework of the present previous actions, there is no indication that allows us to infer that FMB treated the images of the person to whom the prints referred beyond the aforementioned period. All this, without prejudice to the fact that the reporting entity provided a copy of said impressions together with the letter of 18/02/2020 in order to motivate the complaint it made before the AEPD and which is being sent to this Authority . At this point, it is necessary to warn the reporting entity that once this Authority has already pronounced on the facts reported, it should delete said impressions.

2.3. About the right to information.

Finally, the complainant union also stated that FMB would not enforce the right to information.

In this regard, as indicated above, FMB informs by means of informative posters about the existence of the cameras, information which it supplements through its website, as determined by article 22.4 of the LOPDGDD. It should be emphasized that the set of information provided by FMB complies with the content established by article 13 of the RGPD.

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.

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is made clear in the instruction of the procedure: "a) The non-existence of the facts that may constitute the infringement; (...)c)

When the proven facts do not manifestly constitute an administrative infraction (...)".

Therefore, I resolve:

1. File the previous information actions number IP 307/2020, relating to Ferrocarril Metropolitana de Barcelona, SA.
2. Notify this resolution to FMB and communicate it to the reporting entity.
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.

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

The director,