

File identification

Archive resolution of the previous information no. IP 123/2021, referring to IGE BCN, SL.

Background

1. 03/26/2021 , the Catalan Data Protection Authority received a letter from a person for whom he was filing a complaint, due to an alleged breach of the regulations on personal data protection .

Specifically, the person making the complaint stated that at the Turó de la Peira Municipal Sports Center in Barcelona (hereinafter, CEM), two cameras had been installed at the beginning of March 2021, without giving effect to the right of information through a poster and without having obtained the consent of the people affected.

2. The Authority opened a preliminary information phase (no. IP 123/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 30/03/2021 Barcelona City Council was required to inform about the date of installation and entry into operation of the two cameras subject to complaint, the purpose of the treatment, as well as in order to certify how the right to information was made effective.

4. On 04/15/2021, the Barcelona City Council responded to the aforementioned request in writing in which it set out the following:

- That the cameras began to be installed on 03/04/2021 and that they did not become operational until 03/19/2021. Prior to its entry into operation, the existence of a video surveillance system was announced through the corresponding and mandatory information posters.
- That the purpose of the treatment is to guarantee the safety of people, goods and facilities; and the legal basis that legitimizes it is the fulfillment of the public interest, in accordance with the provisions of article 6.1.e) 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).
- That the right of information is made effective by means of informative posters that point out the existence of the cameras. The posters are located at the entrance to the CEM and in the access corridor of floor 0.
- That the information posters were installed on 03/17/2021, two days before the cameras came into operation (03/19/2021).
- That the information posters inform of the existence of the video surveillance system, constant the data of the person in charge of the treatment, informing about the purpose of the treatment and the exercise of their rights and the possibility of obtaining more information about this treatment.

- That the management of the CEM is carried out through a service concession contract awarded on 02/19/2019 for a period of four years, extendable for another year, in favor of the company IGE BCN, SL.
- That this company, as concessionaire, has the possibility to carry out those treatments that it deems appropriate and are provided within the scope of the strict compliance with the service concession contract which, among others, involves the security of the installation and all those activities that are specified as its legitimate interest.

The Barcelona City Council provided various documents, including two photographs of the information posters on the existence of the cameras placed in the CEM, which indicated that the person responsible for the treatment was IGE BCN, SL.

5. On 05/25/2021, also during this preliminary information phase, the company IGE BCN, SL was required to report, among others, on how the information is provided to the affected persons on the rest of the ends provided for in article 13 of the RGPD. In turn, the said company was required to provide the memory and a recording of the images captured by both cameras.

6. On 06/15/2021, IGE BCN, SL responded to the aforementioned request in writing in which it stated, among others, that the informational posters of the cameras were placed on 03/17/2021 and the cameras went live on 03/19/2021.

Among other documentation, IGE BCN provided a recording of the images captured by the two cameras subject to the complaint; the memory of the video surveillance system; as well as the printout through which additional information was provided on the processing of data by said cameras, where it is pointed out that the purpose is to guarantee the safety of people, property and facilities.

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 Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.

2. Based on the background story, it is necessary to analyze the reported events that are the subject of this archive resolution.

2.1. About consent.

First of all, the person making the complaint stated that two video surveillance cameras had been installed in the CEM that processed images without obtaining the consent of the people affected.

Well, the consent of the affected person (art. 6.1.a RGPD) is not the legal basis that legitimizes the processing of images for security purposes, but rather it is based on the fulfillment of a mission in the public interest in consistent with article 22 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter, LOPDGDD) which provides that *"Physical or legal persons, public or private, may*

carry out the processing of images through camera or video camera systems with the purpose of preserving the safety of people and property, as well as their facilities."

2.2. About the right to information.

In relation to this, the complainant stated that no informative poster had been installed in the CEM about the existence of the cameras and that the users of the CEM had not been notified of their installation.

Regarding the right to information in the field of video surveillance, it is appropriate to refer to article 22.4 of the LOPDGDD, which provides the following:

*"4. 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."*

In turn, article 12.6 of the APDCAT Instruction 1/2009, of February 10, on the processing of personal data by means of cameras for video surveillance purposes, regarding the right to information, determines the Next:

"12.6 The person responsible for the treatment, or whoever designates in their place, must also provide the affected persons with information on the rest of the points provided for in article 5.1 of the LOPD through printed materials or through their website or electronic headquarters, where the specific purpose of the surveillance must be stated, as well as the rest of the information established in sections a), d) and e) of article 5 of the LOPD."

In the present case, both the Barcelona City Council and IGE BCN have certified the placement of two informative posters of the existence of the cameras at the entrance to the CEM and in a corridor, the content of which is adjusted as determined by article 22.4 of the LOPDGDD and the annex of Instruction 1/2009.

Likewise, IGE BCN has also provided the form that is made available to interested persons in relation to said image processing, which corresponds to the ends provided for in sections 1 and 2 of article 13 of RGPD

It is worth noting that in his letter of complaint dated 03/26/2021, the person making the complaint stated that no informative poster had been installed about the existence of the cameras. In this sense, it is necessary to point out that article 12.4 of Instruction 1/2009 establishes that it is not required to specify the location of the cameras. Therefore, it is not necessary to place an informational sign at every location where there is a camera.

On the contrary, both the Barcelona City Council and IGE BCN confirm that the informative posters of the existence of the cameras were installed on 17/03/2021, two days before they came into operation (19/03 /2021).

Given that within the framework of the previous actions carried out by this Authority, no element has been found that would allow the Barcelona City Council and IGE BCN to distort the statements that the posters were installed on 03/17/2021, it is necessary apply here the principle of presumption of innocence given that the existence of evidence of infringement could not be proven 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 since 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, any fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is necessary to agree to its archive.

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 highlighted in the instruction of the procedure: *"c) When the proven facts do not manifestly constitute an administrative infraction"*.

Therefore, I resolve:

1. Archive the actions of prior information number IP 123/2021, relating to IGE BCN, SL.
2. Notify this resolution to IGE BCN, SL and the person making the complaint.
3. Communicate this resolution to Barcelona City Council.
4. 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.

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, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in 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,