

File identification

Archive resolution of the previous information no. IP 127/2022, referring to the Provincial Council of Barcelona.

Background

1. On 04/07/2022, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the Provincial Council of Barcelona, on the grounds of an alleged breach of data protection regulations personal _

The complainant, a security guard for the company hired by the Provincial Council of Barcelona to monitor the Mundet Precinct, stated that the company he worked for notified him of a warning on 03/18/2022 in which he said he had been caught using an unfolded cardboard box to avoid being recorded at his workplace by a surveillance camera, although he said it did not hide the entrance to the room. He added that, both he and some other work colleagues, changed and ate in said room, where there were several cupboards and utensils intended for that purpose, just as it happened in the security place of the north pavilion of the same Mundet Precinct, where the guards had to eat in front of a camera.

He also stated that he was within his right to refuse to be monitored at his workplace in those circumstances and without a clear justification or due information. Finally, he mentioned that in the tender for the surveillance service it was specified that there must always be two people in the control room, but that, in practice, only one person remained while two others were on patrol.

The complainant provided various documentation: the letter of reprimand notified to him by the company he worked for and three photographs.

2. The Authority opened a preliminary information phase (no. IP 127/2022), 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 21/09/2022, the reported entity was required to indicate whether the security guards of the Mundet Precinct had any space reserved for changing clothes or food, and, in case they did it inside the control room, which would indicate whether the field of focus of the camera in question captured the area where the guards were eating or changing. Likewise, the reported entity was requested to provide an image corresponding to the field of focus of the camera located in the control room, dated prior to said request, as well as to specify the purpose of the video surveillance system.

4. On 09/29/2022, the Diputació de Barcelona responded to the aforementioned request through a letter in which it set out the following:

— Regarding whether the security guards at the Mundet Precinct have any space reserved for changing clothes or for eating, he answered that "(...) they have a reserved changing room for changing and lockers assigned to each security guard in the Espinalb Building, which is a different building than the one in which the Control Room is located. Likewise, they

have a dining room reserved for them in the Serradell building itself (room 1A) on a different floor than the one where the Control Room is located .

— As for what, in the event that the workers ate or changed in this room, it would be pointed out if the field of focus of the camera captured the area where they would do said activities, he answered that "(. .) do not have to change or eat in the Control Room, as they have reserved dressing and dining areas. In the attached control room image, you can see that the camera's field of focus is the workspaces. There are NO cameras in the reserved dressing room and dining room spaces, in accordance with art. 89.2 LOPDGDD."

— Regarding the fact that he specified what the purpose of the video surveillance system is, he answered that, with regard to the treatment "Access control and video surveillance", the purpose is "Control access and security of the outbuildings and buildings of the Provincial Council of Barcelona by means of security personnel and video surveillance systems. Control external labor personnel to examine the quality of services provided in the field of security." Likewise, he added that "This information on the treatment activity can be found in the open in the personal data protection section of the electronic Headquarters of the Data Controller <https://seuelectronica.diba.cat/serveis-de-la-seu/proteccio-dades/fixers-dades-personals.asp>, in which first level of information is its purpose", while informing that "Otherwise, the regulation of the personal data processing agreement between the Responsible and the Manager remains incorporated in the PCAP and the PPT of the corresponding contract signed with the company providing the external service."

The reported entity provided an image dated 20/09/2022 in which a workspace is visualized. Said image is identified with the following title:
"Archive Camera 3@Serradell (20-09-2022) (15h15m27s). jpg "

5. On 06/03/2023, the reported entity was again required to indicate whether, in addition to finding the information in "open in the personal data protection section of the electronic Headquarters of the Data Controller ", the presence of cameras in the control room in question was reported, with the placement of mandatory informative posters and complementary information, in accordance with the provisions of article 22 of Organic Law 3/2018, and, in this case, certify the date on which said posters were installed, as well as the information they contain.

6. On 03/14/2023, the Diputació de Barcelona responded to this second request through a letter in which it set out the following:

— That the presence of cameras in the security control room of the Mundet Precinct be reported with the placement of mandatory informative posters and complementary information, in accordance with the provisions of article 22 of the Organic Law 3/ 2018

— That the aforementioned posters were installed on January 22, 2019.

— That the literal information contained in said posters is as follows:

"Responsible: Provincial Council of Barcelona. Rambla de Catalunya, 126. 08008 Barcelona. You can exercise your rights at this same address or at <https://seuelectronica.diba.cat/serveis-de-la-seu/proteccio-dades>, where you will also find additional information".

— That, next to the previous text, on said posters there is "the QR that addresses the link <https://seuelectronica.diba.cat/serveis-de-la-seu/proteccio-dades/videovigilancia.asp>, in

which you will find the description of each of the rights provided for in articles 15 to 22 of the RGPD, (...), as well as the complementary information on the treatment".

7. On 03/14/2023 and 03/16/2023, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet on the information provided by the reported entity in its response letters to the requests made to them.

the following informative text was displayed on the link

<https://seuelectronica.diba.cat/serveis-de-la-seu/protecció-dades> :

"Protection of personal data

The recognition of the fundamental right to honor, to personal and family privacy and to one's image includes the guarantee and protection of personal data understood as any information relating to the natural person that identifies it.

Public administrations, in compliance with their powers, may collect and process personal data as long as the treatment is adequate, relevant and not excessive in relation to the scope and the specific, explicit and legitimate purposes for which they are obtained.

In this framework, the Diputació de Barcelona strictly complies with the regulations in force at all times on the protection of personal data and adopts the legally required measures to protect them, preserving their privacy and confidentiality.

In any case, any person who provides personal data to the Diputació de Barcelona can exercise the rights of access, rectification, deletion, opposition and limitation of treatment, in accordance with the provisions of European Regulation 2016/679 general data protection.

Citizen's rights

Right of access

The right of access entitles the interested party to request and obtain information free of charge on whether their personal data is being processed, for what purpose and with what specific uses, the retention period, where it was obtained, and if have been communicated or are intended to be communicated and to whom. A copy of the processed data can be provided.

You can exercise the right of access through the application process.

Right of rectification

The right of rectification entitles the interested party to request that inaccurate data be rectified or that incomplete data be completed. This right can be exercised over all the processed data or over some in particular, in accordance with the request of the interested party and the purposes of the treatment.

You can exercise the right of rectification through the application process.

Right of deletion

The right to deletion entitles the interested party to request the deletion of the data when they are no longer necessary for the purpose that motivated their collection and treatment, when they have been treated unlawfully, when they have been to delete due to legal obligation, and when the interested party withdraws the consent on which the treatment was based or when he opposes it (and other legitimate reasons do not prevail).

This right does not apply when the Diputació de Barcelona has to process the data due to legal obligation, has to fulfill a mission carried out in the public interest or has to exercise the public power

that corresponds to it; when the purpose of the treatment is the file in the public interest or the formulation, exercise or defense of claims.

You can exercise the right to deletion through the application process.

Right of opposition

The right of opposition entitles the interested party to request that their data not be processed for reasons related to a specific personal situation. This right cannot be exercised in the event that the treatment is necessary for the performance of a mission carried out in the public interest or in the exercise of public powers of the County Council.

You can exercise the right of opposition through the application process.

Right to limitation of treatment

The right to limitation of treatment entitles the interested party to request from the Provincial Government the limitation of the treatment of the data when they dispute its inaccuracy (while the person in charge or person in charge of the treatment verifies them); when the treatment has been carried out unlawfully and the interested party opposes their deletion; when they are no longer necessary but the interested party wants to keep them to formulate, exercise or defend claims, or when the interested party opposes the treatment while it is verified whether the legitimate reasons of the Provincial Council prevail over their own.

In these cases, the data may only be processed with the consent of the affected or interested party, to protect the rights of another person or for reasons of public interest.

You can exercise the right of limitation through the application process.

Right to data portability

The right to data portability allows the data to be obtained in a structured, commonly used, machine-readable and interoperable format when the treatment is carried out by automated means, and to communicate them to another person in charge determined by the interested party, without being prevented by the person in charge to whom it had been provided, as long as the data have been collected with the consent of the interested party or in a contractual relationship. This right does not apply when the Administration processes the data of the interested party to fulfill a mission of public interest or in the exercise of public powers.

You can exercise the right of portability through the application process.

Right to claim for lack of response or unsatisfactory response

Faced with the denial, total or partial, of the exercise of the rights of access, rectification, deletion, opposition and limitation of treatment, or faced with the rejection of the interested party's request, the Provincial Government puts at your provision of the mailbox of the data protection representative (dpd@diba.cat). If, despite this, the interested party is not satisfied with the meaning, the deadline or any other aspect of the response, they can submit a claim on the website of the Catalan Data Protection Authority (APDCAT).

Communication regarding the rectification or deletion of personal data or the limitation of treatment The Diputació de Barcelona will communicate, whenever it is possible and does not represent a disproportionate effort, any rectification or deletion of personal data, or limitation of treatment, to the recipients to whom it has communicated personal data".

the following informative text was displayed on the web link

<https://seuelectronica.diba.cat/serveis-de-la-seu/proteccio-dades/vidovigilancia.asp> :

"Video surveillance

In accordance with article 4.1 of the European Regulation 2016/679, of April 27, general data protection , the image or the voice are personal data and, therefore, the provisions of this regulation.

Video surveillance consists of the capture of images and, where appropriate, of voice, through a system of fixed or mobile cameras, which, for reasons of public or private security or other similar ones, monitor and control buildings, installations, vehicles or other public and private spaces, carry out labor and traffic control , and ensure the normal operation of certain public services by monitoring people's habits, behavior or condition.

Processing of personal data in the video surveillance system at the Diputació de Barcelona
The use of video cameras for surveillance purposes meets the following criteria:

The guarded spaces are marked in accordance with the *Guide on the use of video cameras for security and others purposes* of the Spanish Data Protection Agency.

Monitors or terminals are installed in places not accessible to unauthorized third parties.

The recorded data is deleted before 1 month from the date of collection.

The recording of a crime or an administrative offense is communicated to the authority, reported and the images are kept, duly blocked, until the authority has to make use of them.

Security personnel must maintain the privacy of any information accessed through the video surveillance system.

In accordance with the provisions of article 13 of the European Regulation 2016/679, of April 27, general data protection, we inform you that the Diputació de Barcelona will treat the images captured by the video surveillance system in order to manage and control access, and to guarantee the security of the dependencies, buildings and premises, and also that of the workers and any other person. And all this within the scope of their powers, in accordance with what is established in article 36 of Law 7/1985 regulating the bases of the local regime and the specific data protection regulations regarding access control in the buildings

Personal data will not be transferred to public or private natural and legal persons without your consent, unless, on the basis of a complaint, they must be provided to the security forces , or if authorized by law.

At the same time, we inform you that the captured images will be destroyed in less than 1 month from the date of capture. They can only be blocked when they can serve as evidence of a crime until the police or judicial authority has to make use of them.

You can exercise your rights of access, rectification, deletion, opposition and limitation of the processing of your data at the electronic Headquarters and in person or by post at the General Registry of the Barcelona Provincial Council.

Inquiries related to privacy can be addressed to the data protection officer (dpd@diba.cat), who will be responsible for answering them.

Although this way you will get the appropriate answer, you can submit, if you consider it appropriate, a claim before the Catalan Data Protection Authority (APDCAT)."

Finally, it was found that the following informative text was displayed on the web link <https://seuelectronica.diba.cat/serveis-de-la-seu/proteccio-dades/fitxers-dades-personals.asp> , regarding to the purpose and other aspects of interest of the treatment called "Access control and video surveillance":

"Control access and security to the offices and buildings of the Provincial Council of Barcelona by means of security personnel and video surveillance systems. Control external labor personnel to examine the quality of services provided in the field of security. The video surveillance images are deleted before 1 month from the date of capture, unless they are evidence of a crime".

It must be specified that the three web links indicated above are accessible from each other from the "Personal data protection" menu located on the left of the screen, within the electronic headquarters of the Diputació de Barcelona.

Finally, a printout of the above information was made and an automated copy of the referred links is kept.

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.

The analysis of the facts reported is limited to addressing the reasons for the report, relating, on the one hand, to the existence of video surveillance cameras in the security posts of the Mundet Precinct, among which one would be aimed at the workplace of the complainant, space where, as indicated, some workers would change and eat and, on the other hand, to the fact that the complainant would not have been informed of the conditions or the justification for the existence of said video surveillance camera.

The rest of the facts related to the conditions of the tender for the security service in terms of the number of cash that must remain in the Control Room exceed the sanctioning framework provided for in the data protection regulations and, therefore, the 'competent area of the Authority.

Once the object of analysis has been defined, in terms of the data protection regulations applicable to the reported data treatments, it is necessary to state that, in this specific case, the capturing of the controversial images, for which the reported entity (art. 4.7 RGPD), would be subject to the regime provided for in the RGPD and the LOPDGDD and Instruction 1/2009, of February 10, on the processing of personal data through video surveillance cameras, which it is still valid in that it does not contradict the RGPD and the LOPDGDD.

2.1. With regard to the first reason for the complaint, that is to say, the existence of video surveillance cameras in the security locations of the Mundet Precinct, among which one would be aimed at the place of work of the person making the complaint, space where, as indicated, some workers would change and eat, it should be taken into account that the reported entity has stated that said workers should not change or eat in the Control Room as they have other facilities available for them purposes, in which there are no cameras. Likewise, in the photograph provided by the reported entity showing a work space where a watchman and his surroundings can be seen, there are no elements that allow us to deduce that they would be able to be used for another use, as they could be the dressing room or dining room.

On the other hand, the three images provided together with the complaint show the following: the first image consists of a photograph partially showing a computer screen showing a close-up profile of a person eating a sandwich in a work environment (in front of a table with

a keyboard). In the second image you can see a refrigerator and a microwave on top of a chest of drawers, and in the last image you can see an open drawer of what looks like the same piece of furniture in the previous photograph, with different utensils such as plates and some food and drinks, closed cupboards and, on the left, hanging work clothes.

However, the graphic material provided by the complainant, as regards the first image, is only illustrative of the fact that a person was eating at his workplace and was captured by a camera, but it is not an element sufficient evidence that that is the place authorized by the company to carry out said activity or that there is no suitable place to do so. On the other hand, and with regard to the other two photographs, these do not allow us to deduce that they are images taken in the Control Room where the controversial camera would have been installed, in the same way that it cannot be determined that it is the same space that is shown in the image provided by the denounced entity, since there is no coincidence in the furniture, much less allow to infer, even if it is indicative, that that space falls within the field of vision of 'a video surveillance camera.

2.2. With regard to the second point of the complaint, that is to say, that the person making the complaint had not been informed of the conditions or the justification for the existence of said video surveillance camera, the reported entity highlighted that in the surveillance sites of the Mundet Precinct, where there is video surveillance, informative signs were installed on 22/01/2019, in which the presence of cameras is reported, in accordance with the provisions of the article 22 of the LOPDGDD.

Likewise, the reported entity stated that web links are provided in said posters, with the content indicated in precedent 7 of this Resolution.

Regarding the authorization for the processing of these images captured by the video surveillance system, as the posters installed by the reported entity would indicate, the video surveillance system responds to the purpose of managing and controlling access, and to guarantee the security of the outbuildings, buildings and premises, and also that of workers and any other person, referred to in article 22.1 of the LOPDGDD, in relation to article 6.1.e) of RGPD

However, aside from the need to have a legal basis, the processing of data through the video surveillance system must comply with the rest of the principles and guarantees of the personal data protection regulations, among others, the duty to inform (arts. 12, 13 and 14 of the RGPD), in the terms provided for in article 22.4 of the LOPDGDD:

"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 can also be included in the information device (...)"

Regarding the design and content of the information poster referred to in article 22.4 of the LOPDGDD, it is necessary to take into account Instruction 1/2009, of February 10, 2009, of this Authority, on the processing of data of a personal nature through cameras for video surveillance purposes, which, despite being prior to the LOPDGDD, remains in force in so far as it does not contradict this rule or the RGPD. Article 12 of this Instruction provides for the following:

"12.2 The information posters must be placed before the capture of images and voices begins (...).

12.3 Information posters must be placed in clearly visible locations before entering the recording field of the cameras. The specific location of the posters will depend, in each case, on

the nature and structure of the video-surveillance areas and spaces . However, the following conditions must be taken into account:

For video surveillance cameras in buildings or facilities, an information poster must be placed at each of the accesses to the video surveillance area . If they are divided by floors, in addition, another information poster must be placed on each of the floors that have video cameras, located in a main access space to the video-surveillance area or zone on the floor.

(...)

For video surveillance cameras in open spaces, an information poster must be placed at a sufficient distance so that the affected people are aware, in a clear and permanent way, of the existence of video surveillance cameras in the area or zone which they access. In any case, the location of the information sign must be at a distance of less than 50 meters from the outer limit of the area.

12.4 The content and design of the information poster must conform to what is established in the annex to this Instruction, without in any case being required to specify the location of the cameras (...)"

Regarding the design of the information poster, the annex to this Instruction states the following:

"—1 In the information poster referred to in article 12 of this Instruction, the following information must be stated in a clearly visible form, from top to bottom, at least:

Indication of the purpose for which the data is processed (" Video-surveillance area ").

Pictogram symbolizing a video surveillance camera inside a white rectangle. When the voice is captured, the pictogram must reflect this circumstance.

The informative text "Data Protection".

Express indication of the identification of the responsible person before whom the rights of access, rectification, cancellation and opposition can be exercised.

Indication of the site or website where the information referred to in article 12.6 of this Instruction can be obtained."

In this regard, it should be noted that, according to the information provided by the reported entity during the investigation phase, the posters installed in the Control Room of the Mundet Precinct would contain all the required information.

In relation to this, it is necessary to highlight the fact that in the information posters, through access to web links, it was indicated that the processing of images through the video surveillance system was done with the purpose, among others, of " Control external labor personnel to examine the quality of the services provided in the field of security", which implies compliance with the duty of information in art. 14.1 c) of the RGPD and allows you to confirm the legality of the treatment, in accordance with the provisions of article 6.1 c) of the RGPD.

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, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, should be archived.

Article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that "(...) *no charges will be drawn up and the dismissal of the file and the archive of actions when the proceedings and the tests carried out prove the non-existence of infringement or responsibility. This resolution will be notified to the interested parties*" . And article 20.1) of the same Decree determines that the dismissal

proceeds: " b) *When there are no rational indications that the facts that have been the cause of the initiation of the procedure have occurred*".

Therefore, I resolve:

1. File the previous information actions number IP 127/2022, relating to the Provincial Council of Barcelona.
2. Notify this resolution to the Provincial Council of Barcelona and to 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.

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,