

## File identification

Resolution of sanctioning procedure no. PS 34/2020, referring to Vilanova i la Geltrú Town Council.

## Background

1. On 09/17/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Vilanova i la Geltrú City Council, on the grounds of an alleged breach of the regulations on personal data protection. In particular, the complainant stated that the Vilanova i la Geltrú City Council had installed a video surveillance system at the Municipal School of Art and Design (hereafter, EMAID). He added that a video surveillance poster had been placed in a place where it was not clearly visible "since there are iron bars in front of the badge that properly prevent the vision" and which did not include the identity of the person responsible of the treatment, nor the possibility of exercising the rights, nor where you could obtain more information about the treatment of personal data.

In turn, the reporting person also indicated that the "viewing of the camera and manipulation is the responsibility of the janitor on the morning shift, while the janitor on the afternoon shift and substitutes have access only to the visualization."

The complainant provided a photograph of the poster installed at the entrance to the EMAID.

2. The Authority opened a preliminary information phase (no. IP 248/2019), 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 03/12/2019 the Authority carried out an inspection at the EMAID premises, to verify certain aspects related to the video surveillance system installed there. In that face-to-face inspection, the representatives of the Vilanova i la Geltrú City Council stated the following:

- That the video surveillance system installed at the EMAID is integrated by a single interior camera located at the entrance.
- That the person responsible for the treatment is the Vilanova i la Geltrú City Council.
- That the purpose is access control, the safety of the building and people.
- That the right to information is made effective by means of a poster located at the entrance. the poster he is behind bars, but can be viewed.

- That in the event that the poster does not indicate who is responsible, it is inferred that it is his own City Council.
- That it is not informed of the rest of the extremes provided for in the regulations on protection of data
- That the information poster states that the rest of the information can be accessed by going to in the EMAID.
- That the monitor to access the images captured by the video surveillance system is located in the concierge.
- That only the director of the EMAID is authorized to access the recorded images.  
In real time, both the janitor on the morning shift and the one on the afternoon shift can view the images.

Likewise, on this same date, the Authority's inspection staff verified the following:

- That the Vilanova i la Geltrú City Council had installed an indoor camera at the EMAID located in the lobby, which focused access to the building.
- That the City Council informs of the existence of the cameras by means of a poster located in a window, next to the access door. The contents of the poster and its location were photographed.
- That the equipment for viewing the images was located in the concierge room. This one room was a restricted area located under a staircase.

Likewise, the inspection staff carried out a photographic report of the camera, the poster and its location, as well as the monitor and its location. In this photo report, you can see how the information poster installed on the inside of the window, located next to the access door to the EMAID, was not clearly visible from the outside. And this, given that in front of the window where said poster was placed there was a fixed exterior grill that made it difficult to see.

On the other hand, once the previous verifications had been carried out as part of the on-site inspection, the inspection staff found that the City Council subsequently proceeded to replace the video surveillance sign, which was placed on the door of access to EMAID.  
A report was made on the location and content of said information poster.

4. On 11/06/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Vilanova i la Geltrú City Council for an alleged violation provided for in article 83.5.b), in relation to articles 12 and 13; all of them from 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 (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 07/02/2020.

5. On 16/07/2020, Vilanova i la Geltrú City Council made objections to the initiation agreement.

6. On 21/07/2020, the City Council presented additional allegations to the initiation agreement.

7. On 14/10/2020, the person instructing this procedure formulated a proposed resolution, by which it was proposed that the director of the Catalan Data Protection Authority admonish the Vilanova i la Geltrú City Council as being responsible for an infringement provided for in article 83.5.b) in relation to the articles 12 and 13, all of them of the RGPD.

This resolution proposal was notified on 10/20/2020 and a period of 10 days was granted to formulate allegations.

8. On 11/12/2020, the accused entity submitted a statement of objections to the resolution proposal.

In this letter, the City Council points out that "in addition to what was presented by the City Council on October 21, 2020" allegations were made in the proposed resolution. However, this initial letter of 21/10/2020 to which the City Council seems to refer, does not appear to have been presented to the Authority.

proven facts

For an undetermined period of time, but which in any case would include 03/12/2019, the Vilanova City Council did not properly report the processing of images for video surveillance purposes through the camera installed at the access to EMAID, for the following reasons:

- The informative poster of the existence of the camera, which was placed in a window behind a fixed gate of the EMAID access, it was not clearly visible.
- The identity of the person responsible for the treatment was not stated on said poster and the place to obtain more information on data treatment was also no longer visible due to the wear of the sun.

ÿ The information on the rest of the points provided for in article 13 of the RGPD was not kept available to the affected persons.

On 03/12/2019, once the Authority's inspector staff carried out the corresponding verifications, the Vilanova i la Geltrú City Council replaced the information sign about the existence of the camera with another one located at the gateway to the EMAID.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. The accused entity has made allegations both in the initiation agreement and in the resolution proposal. The first ones were already analyzed in the resolution proposal. Next, the allegations made by the imputed entity before the proposed resolution are analyzed.

#### 2.1. About the photo reportage.

In the 1st section of its statement of objections, the accused entity states that this Authority has not provided the photographic report made during the on-site inspection, which is why it considers that a penalty without evidence to justify it.

In this respect, as indicated in the proposed resolution, if the City Council wants to access said photographs, it can request a copy at any time in accordance with what is provided for in articles 26 of Law 26/ 2010, of August 3, of the legal regime and procedure of the public administrations of Catalonia and 53.1.a) of the LPAC.

However, the City Council has not exercised this right.

However, it should be noted that in the present sanctioning procedure it is not solely imputed to the City Council that the information poster of the existence of the camera installed in the EMAID was not clearly visible, but that in the said poster did not state the identity of the data controller and that the site for obtaining more information on data processing was not visible; as well as it was also alleged that the information on the rest of the points provided for in article 13 of the RGPD was not kept available to the affected persons.

#### 2.2. About the corrective measures.

The rest of the allegations made by the accused entity before the resolution proposal focus solely on the 5th legal basis of the resolution proposal, referring to the corrective measures to correct the effects of the infringement.

Therefore, the accused entity does not make any other allegation tending to distort the facts that are considered proven in this resolution.

Having said that, in the 5th legal basis of the resolution proposal, it was addressed whether, through the privacy policy or the record of processing activities (hereafter, RAT), information was offered on the rest of the points provided for in article 13 of the RGPD in relation to the processing of images for video surveillance purposes through the camera installed in the EMAID; as well as whether the information thus provided would be concise, transparent, intelligible and easily accessible,



through its website for the purposes that have just been transcribed, which do not include video surveillance (which are collected through cameras).

It is for this reason that the people affected by the video surveillance treatments who access the privacy policy of the municipal website (as invited by the informative poster of the existence of the camera installed in the EMAID that was installed in date 03/12/2019) do not obtain information about the treatment they wish to consult (video surveillance), but about others. And besides, not in the privacy policy either it is specified to the people affected by the processing of images for video surveillance purposes that, to obtain more information about said specific processing, they can consult the RAT. In fact, the privacy policy does not include any reference to video surveillance treatments.

Therefore, the privacy policy of the City Council's website, as it is configured, is not the space where the affected persons can consult the other extremes provided for in article 13 of the RGPD, regarding the image processing for video surveillance purposes.

Another thing is for the City Council to modify said privacy policy to offer concrete and specific information on video surveillance treatments.

#### 2.2.2. About the RAT.

Secondly, with respect to the RAT, the accused entity considers in its statement of allegations to the proposed resolution, that the regulations on data protection do not determine that the information complementary to the collection of the data must be included in the RAT.

Well, the proposed resolution did not address whether the content of the RAT was in accordance with articles 30 of the RGPD and 31 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of rights digital (hereinafter LOPDGDD). Nor was it indicated there that the RAT had to comply with Article 13 of the RGPD or that additional information about the processing of images for video surveillance purposes had to be provided through the RAT.

On the contrary, the proposal analyzed whether with the content of the RAT it could be considered that the City Council provided information on the processing of images through the EMAID camera in accordance with article 13 of the RGPD, on the understanding that the privacy policy referred to other treatments of personal data collected through the municipal website and that the City Council stated that the complementary information of the controversial treatment was also collected in the RAT, as the entity imputed reiterates in his statement of objections to the proposed resolution where he points out that the "detailed information on each treatment can be found in the Register of Treatment Activities which can be accessed from the same Privacy Policy."

As indicated by the instructing person in the proposed resolution, it is necessary to emphasize again that in the new information poster about the existence of the camera installed in

the EMAID, which replaced the City Council at the end of the on-site inspection carried out on 03/12/2019, did not specify that the RAT is the place where interested parties can obtain more information about the treatment. Indeed, the said poster refers interested parties to the privacy policy of the City Council's website, which does not contain any reference to the treatment for video surveillance purposes, and refers to the treatment of data collected through the website with the purposes of "attention, management, control and resolution of inquiries and requests for procedures or services provided by the City Council." And, as has been advanced, in the privacy policy of the City Council's website it is not specified that to obtain more information about said video surveillance treatment you can consult the RAT, although it is true that in the privacy policy there is a link to the RAT.

Since the privacy policy referred to other treatments of personal data, it is necessary to assess whether with the information contained in the City Council's RAT (for the purposes of the provisions of articles 30 RGPD and 31 LOPDGDD), it could be considered that it is also facilitated there information on the other aspects established in article 13 of the RGPD in relation to the treatment for video surveillance purposes.

In relation to this issue, in the resolution proposal it was already specified that the content of the City Council's RAT does not conform to the provisions of article 13 of the RGPD. Specifically, in the RAT it is not informed about the right to request from the person in charge of the treatment access to the personal data relating to the interested party, to rectify or delete them, to limit the treatment or to oppose it ( art. 13.2.b RGPD); nor about the right to submit a claim to a control authority (art. 13.2.d RGPD).

In this regard, the accused entity considers that the information on the right to submit a claim to the Authority (art. 13.2.d RGPD) can be found in the privacy policy which, as has been reiterated, does not refer to the treatment for video surveillance purposes, but for the collection of data through the web for other purposes.

In turn, the City Council also points out that the new poster provides information on the possibility of exercising rights. It is certainly so, but in the second layer it is necessary to complete this information by specifying which rights the affected person can exercise (art. 13.2.b RGPD). In other words, those of access, rectification, deletion, limitation and opposition.

So, although the RAT may comply with the provisions of articles 30 of the RGPD and 31 of the LOPDGDD (which is not the subject of this sanctioning procedure), it would not provide complete information about the other aspects established in article 13 of the RGPD in relation to the processing of images for video surveillance purposes, for the reasons stated.

Having said that, it cannot be overlooked that the RAT published by the City Council (a 33-page document) is made up of 172 treatment activities, so if the City Council determines that the RAT is the space where the people affected by treatment of images for video surveillance purposes can consult the rest of the ends provided for in article 13 of the RGPD

(or part thereof), the information thus provided would not be provided in a concise and easily accessible form as required by article 12.1 of the RGPD.

In this last sense, in Directives 3/2019 on the processing of personal data using video devices approved on 29/01/2020, the European Data Protection Committee (EDPC) insists that the information of the second layer (the first layer of information is contained in the information poster) must be easily accessible. For its part, the Article 29 Working Group (GT29), in the Guidelines on transparency under the GDPR (WP 260), last revised and adopted on 11/04/2018 (at to which the CEPD is referred in Guidelines 3/2019), considers that the "easy access" element

it implies that the interested person does not have to search for the information, but must be able to immediately recognize where and how to access this information. In the present case it cannot be considered that the information on the controversial treatment, published in the RAT together with 171 other processing activities, be easily accessible as required by Article 12.1 GDPR.

With regard to brevity, GT29 points out in the aforementioned Guidelines, that this element means that the data controller must present the information efficiently and succinctly to avoid information fatigue. GT29 adds that in the online context, it should be avoided that the person concerned has to scroll through large amounts of text in search of specific aspects. Therefore, the information provided through the RAT would also not conform to the element of brevity established in article 12.1 of the RGPD, given its length and without prejudice to the fact that said document allows searching.

On the other hand, the imputed entity requests the opinion of the Authority on whether the number of processing activities declared in the RAT (172) is considered excessive.

Well, the number of treatment activities contained in the RAT of the imputed entity is not in question here. What was indicated in the proposed resolution and is reaffirmed in this resolution, is that if the City Council refers to the RAT to provide specific information on video surveillance treatments, the information thus displayed would not conform to the elements of "easy access" or brevity, required by article 12.1 of the RGPD when the person in charge provides information to the interested parties in accordance with articles 13 to 22 and 34 of the RGPD.

Aside from the above, as set out in the proposed resolution, it should be pointed out that in relation to the treatment activity "Video surveillance access control of municipal buildings", the RAT states that one of the legal bases that legitimizes the treatment is the legitimate interest, a legal basis that does not apply to the treatment carried out by public authorities in the exercise of their functions (art. 6.1.f RGPD).

In relation to this, the imputed entity requests the Authority "to indicate the exercise of public functions and the specific regulations that enable the installation of a system of



video surveillance of access control and perimeter security and the processing of this personal data in order to correct the Register of Processing Activities.”

Although it is not the object of this sanctioning procedure to resolve the doubts that the accused entity has (for this purpose, you can request the issuance of an opinion if you want to know the opinion of the Authority on a specific matter or make use of the public sector consultancy service), said treatment is based on the fulfillment of a mission in the public interest in accordance with article 22.1 of the LOPDGDD. In fact, this rule provides in its statement of reasons that the legality of video surveillance treatments comes from the existence of a public interest.

In accordance with what has been explained so far, the allegations that the City Council has made against the proposed resolution must be rejected.

3. In relation to the facts described, it is necessary to go to article 12 of the RGPD, which provides that "The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication in accordance with articles 15 to 22 and 34 relative to the treatment, in a concise, transparent, intelligible and easily accessible form, with a clear and simple language, in particular any information directed specifically to a child. (...)"

And sections 1 and 2 of article 13 of the RGPD establish the following:

"1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection officer, if applicable;
- c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment;
- d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, as the case may be;
- f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, refers to the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the controller will provide the interested party, at the time they are obtained

personal data, the following information necessary to guarantee fair and transparent data processing:

- a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period;
- b) the existence of the right to request from the person responsible for the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data ;
- c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal;
- d) the right to present a claim before a control authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including the creation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the person concerned."

For its part, article 22.4 of the LOPDGDD, relating to treatments for video surveillance purposes, provides that:

"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."

Regarding the processing of personal data through video surveillance cameras, sections 3 to 6 of article 12 of Instruction 1/2009, of February 10, of the Authority, on the processing of personal data through cameras for video surveillance purposes (hereinafter, Instruction 1/2009), referring to the right to information, determine the following:

"12.3 Information posters must be placed in clearly visible locations before entering the recording field of the cameras. (...)

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 requiring the location of the cameras to be specified. (...)

12.5 It is up to the data controller to ensure the conservation and maintenance of the information posters, so that they allow the affected people to know, at all times, the existence of cameras.

12.6 The person responsible for the treatment, or whoever designates in their place, must also provide the affected persons with information about the rest of the points provided for in article 5.1 of the LOPD through printed materials or through their website or headquarters electronic, 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."

And the annex to Instruction 1/2009 to which article 12.4 of the same rule refers, regarding the content and design of the information poster, states that:

"1. In the information poster referred to in article 12 of this Instruction, the following information must be clearly visible, 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.

2. The design of the information poster must conform to the following requirements:

a) It must be rectangular in shape and with the edges at right angles. Standard poster dimensions are approximately 21cm base and 29.7cm height.

These dimensions can increase or decrease depending on the area or zone subject to video surveillance and the distance that is necessary for the information badge to be visible to the people affected.

b) Its background color is yellow, in the upper left corner of which there may be the logo of the Catalan Data Protection Agency.

c) Centered within a white rectangle, with dimensions of approximately 1/3 of the height of the poster and 4/5 of the width which, in the standard poster, is approximately 6 cm from the upper side, there must be the pictogram referred to in section 1 of this annex.

In any case, these indications must remain proportional in attention to the possible variations in the dimensions of the information poster. (...)"

As indicated by the instructing person, during the processing of this procedure they have duly accredited the facts described in the proven facts section, which are constitutive of the infringement provided for in article 83.5.b) of the RGPD, which typifies as such the violation of "the rights of the interested parties pursuant to articles 12 to 22", among which is the right to information provided for in articles 12 and 13 RGPD.

The conduct addressed here has been collected as a minor infraction in article 74.a) of the LOPDGDD, in the following form:

"a) Breach of the principle of transparency of information or the right to information of the affected person for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679."

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.

The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects. In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

By virtue of this faculty, the Vilanova i la Geltrú City Council must be required to as soon as possible, and in any case within the maximum period of 10 days from the day after notification of the resolution that is dictated in this procedure, make available to the interested persons, the information on the rest of the points provided for in article 13 of

the RGPD, in relation to the processing of images for video surveillance purposes through the camera installed in the EMAID.

This information must be provided in a concise, transparent, intelligible and easily accessible form, as required by Article 12.1 of the GDPR.

In the event that the complementary information is not provided through the privacy policy, the poster must state the new site or website where this information can be obtained, which must be proven by providing a photo of the poster.

Once the corrective measure described has been adopted, within the specified period, the City Council must inform the Authority within the following 10 days, without prejudice to the inspection powers of this Authority to carry out the corresponding checks .

resolution

For all this, I resolve:

1. Admonish the Vilanova i la Geltrú City Council as responsible for an infringement provided for in article 83.5.b) in relation to articles 12 and 13, all of them of the RGPD.
2. Request the Vilanova i la Geltrú City Council to adopt the corrective measure indicated in the 4th legal basis and certify before this Authority the actions carried out to comply with them.
3. Notify this resolution to Vilanova i la Geltrú City Council.
4. Communicate the resolution issued to the Grievance Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
5. Order that this resolution be published 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 articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003 , of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with what they provide article 123 et seq. of the LPAC. 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.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

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

The director,

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