

File identification

Resolution of sanctioning procedure no. PS 58/2020, referring to the City Council of Begues.

Background

1. On 31/01/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Begues City Council, on the grounds of an alleged breach of the regulations on protection of personal data.

Specifically, the person making the complaint stated that the City Council had installed a camera outside the Citizen Service Office (hereafter, OAC) that focused on the public road; as well as that on the outside of the building located in the sports area, the Begues City Council had also installed a camera directed in the opposite direction to the building and facing a football field. The complainant added that the cameras installed in the sports area were viewed through a monitor located at the reception of the sports facilities, which was visible to the people using the facilities.

The complainant provided a copy of an instance that he had presented to the City Council on 12/16/2019 and indicated that the City Council had not responded.

2. The Authority opened a preliminary information phase (no. IP 41/2020), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 03/04/2020, the Authority carried out an inspection act, to verify certain aspects related to the treatment of images through the video surveillance cameras identified by the reporting person. In that face-to-face inspection, representatives of the Begues City Council stated, among others, the following:

- That the purpose of the camera installed outside the OAC was access control.
- That the camera located in the sports area subject to the complaint was intended to control access to the padel courts. This camera had not been able to connect due to wiring problems, which is why it was not capturing images.
- That the video surveillance service was provided by a security company with which the corresponding data processor contract had been signed.
- That the purpose of the camera installed outside the OAC was not to capture images of the public road. Therefore, the authorization of the General Directorate had not been obtained

- of the Security Administration of the Department of the Interior to capture images of the public road or public spaces.
- That the right to information was made effective through informative posters.
 - That no specific information was provided about the treatment of images through of video surveillance cameras.
 - That the images captured by the OAC's external camera could only be accessed by real time or on recordings, the security company at the request of the Local Police.
 - That at the reception of the sports area, the images could be viewed in real time through a monitor located at the reception. Only the security company could access the recordings.
 - That the images captured by the two cameras subject to the complaint were recorded for a period of less than a month.

Also, on this same date, the Authority's inspection staff verified, among others, the following:

- That there was 1 camera installed on the external facade of the OAC which, due to its location, would capture images of Carrer Major de Begues. The Begues City Council informed about the existence of that camera by means of an informative poster.
- That at one end of the building located inside the sports area, there was the camera object of complaint that would focus on the dirt esplanade located in front of the municipal swimming pool (at the end of which there was a dirt field) and access to the oldest padel courts.
- That the Begues City Council informs of the existence of that camera, at least, by means of 3 information posters, one of which is located at the access to the sports area.
- That in the reception of the building of the sports facilities, there was a monitor which was arranged in such a way that the images were not visible to unauthorized third parties.
- That the various images captured by the cameras that made up the video surveillance system installed in the sports area were viewed from this monitor. In turn, it was verified that none of the cameras that were viewed through said monitor corresponded to the camera that was the subject of the complaint, which the representatives of the City Council had stated was not in operation.

The inspector staff carried out a photographic report of the two cameras object of complaint, of the informative posters of their existence and of the monitor of the sports facilities.

Finally, the inspection staff required the inspected entity to provide the Authority with a copy of the following documentation:

- Copy of the images captured by the OAC's external camera, dated 03/02/2020.
- Certificate from the security company in relation to the maximum retention period of the images captured by the camera installed outside the OAC.

4. On 12/03/2020, the data protection delegated entity of the Begues City Council complied with this request. Specifically, he provided a copy of the images captured by the OAC's exterior camera on 02/03/2020 and a certificate from the security company issued on 06/03/2020 through which it was reported that the term of conservation of the images captured by said camera was 25 days.

On the other hand, the delegated entity for data protection also indicated that, once "reviewed the images from the camera on Carrer Major 14, recorded on March 2, 2020", the City Council had given the appropriate instructions to the security company "in order to apply a mask from the moment of capture and avoid excessive recording of the public road". In this sense, a recording of the images recorded by the external camera of the OAC on 05/03/2020 was provided, in which it is observed that the City Council has reduced the field of focus of this camera through image masking (technical functionality that blocks certain areas of the camera's field of view so that they are not viewed or recorded).

5. On 06/11/2020, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Begues City Council for two alleged infringements: an infringement provided for in article 83.5.a) in relation to article 5.1.c); and another 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 11/12/2020.

The initiation agreement explained the reasons why no charge was made with respect to other reported facts. First of all, regarding the field of view of the camera installed in the sports area that the complainant identified in his complaint, given that the City Council reported that it had not been able to connect due to wiring problems, reason so it didn't capture images. In this regard, the Authority's inspector staff checked from the monitor where the images captured by the various cameras that made up the video surveillance system installed in the sports area were viewed, that none corresponded to the camera that was the subject of the complaint. And secondly, regarding access by unauthorized persons to the images captured by the video surveillance system installed in the sports area through the monitor located at its reception, since the inspector staff of the 'Authority also verified that said monitor was arranged so that the images were not visible by unauthorized third parties.

6. On 26/11/2020, the data protection delegated entity of the Begues City Council made objections to the initiation agreement. The accused entity provided various documentation with its letter.

7. On 12/15/2020, 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 Begues City Council as responsible for two infringements: an infringement provided for in article 83.5.a) in relation to the article 5.1.c); and another violation provided for in article 83.5.b) in relation to articles 12 and 13, all of them of the RGPD

This resolution proposal was notified on 12/21/2020 and a period of 10 days was granted to formulate allegations.

8. The deadline has passed and no objections have been submitted.

proven facts

1. Begues City Council had installed a video surveillance camera outside the OAC (carrer Major, 14). As it appeared from the images recorded by this camera on 03/02/2020, and as the City Council admitted, until 03/05/2020 (the date on which the City Council reduced the field of vision of this camera through masking) images of people passing through the public road were captured beyond what was unavoidable to achieve the security purpose of the building and of the people accessing its interior.

2. In relation to the processing of images for video surveillance purposes, the Begues City Council did not make available to the affected persons all the information provided for in article 13 of the RGPD. In this sense, although the poster informed about the existence of the treatment, the identity and contact details of the person in charge, the possibility of exercising the rights (although these should be specified when the information is provided additional) and the place where the affected person should go to obtain more information about the treatment, the City Council did not provide the rest of the information provided for in sections 1 and 2 of article 13 of the RGPD (in specifically, the information provided for in sections "b", "c", "e" of Article 13.1 RGPD and in sections "a", "b" and "d" of Article 13.2 RGPD).

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 not made allegations in the resolution proposal, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

2.1. On the proven fact first.

In the statement of objections presented by the data protection delegated entity to the initiation agreement, it was alleged that the Begues City Council, when it became aware of the images captured by the video surveillance camera located on the external facade of the OAC, applied on 05/03/2020 a mask from the moment of capture, which also avoided excessive recording of the public road. In other words, from that date on which the scope of vision was reduced, images of people passing by were no longer captured on the public road beyond what is unavoidable to achieve the purpose of security of the building and the people who access its interior.

Well, it must be made clear that in the written statement of objections to the initiation agreement, the reality of the first proven fact was not questioned.

Having said that, as explained by the investigating person in the resolution proposal, it is also necessary to point out that the adoption of measures to correct the effects of the infringements do not distort the imputed facts, nor do they change their legal qualification.

Having established the above, the performance of the Begues City Council must be positively evaluated, who, following the inspection carried out by the Authority's inspector staff within the framework of the prior information phase, has already implemented the measures corrections to correct the effects of the infringement.

Specifically, as indicated in the fourth factual antecedent, before the present sanctioning procedure was initiated, the Begues City Council had already proven to have reduced the field of vision of the controversial camera by means of masking of the images (technical functionality that blocks certain areas of the camera's field of vision so that they are not visualized or recorded), so that only the part of the public road that is considered essential to reach the purpose of preserving security.

This action by the City Council, as indicated in the proposed resolution, means that it becomes unnecessary to require any corrective measures in this regard.

2.2. On the second proven fact.

In the statement of objections to the initiation agreement, neither the second proven fact nor its legal qualification was questioned. On the contrary, for the purposes of correcting the infringement that was imputed in the initiation agreement to the Begues City Council, the delegated entity for data protection provided a copy of the information that it had proceeded to publish (with subsequent to the in-person inspection act dated 03/04/2020) in the data protection section of the municipal website of Begues City Council (<http://www.begues.cat/altres-continguts/proteccio-de-dades/>), where according to this entity information was provided on the capture of images for the purpose of video surveillance.

Apart from the above, it was also proven that at the entrance to the OAC the Begues City Council had installed an additional poster to inform about the existence of the cameras, in order to guarantee that the people affected have knowledge of it; as well as in the aforementioned section of the municipal website, the record of processing activities was also published, which could also be accessed through the "Open Government" section of the transparency portal.

Without prejudice to the fact that, as will be indicated later, the adoption of measures may be required to correct the effects of the infringement linked to the principle of transparency, as explained by the instructing person in the resolution proposal, it is necessary to emphasize again the good predisposition of the City Council of Begues to comply with the data protection regulations.

3. In relation to the facts described in the first point of the proven facts section, it is necessary to go to article 5.1.c) of the RGPD, which regulates the principle of data minimization determining that personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".

For its part, article 22.2 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (hereafter LOPDGDD), relating to treatments for video surveillance purposes, provides that:

"2. Images of the public road can only be captured to the extent that it is essential for the purpose mentioned in the previous section. However, it is possible to capture the public road in a greater extent when it is necessary to guarantee the safety of goods or strategic installations or infrastructures linked to transport, without in any case the capture of images from inside a private home."

Also in relation to the processing of personal data through cameras for video surveillance purposes, it is necessary to take into account article 5.4.b) of the Instruction of the APDCAT 1/2009, of February 10, on the processing of personal data through cameras for video surveillance purposes, which it does not consider legitimate:

"b) The capture of images of people on public roads, unless it is carried out by the forces and security bodies in accordance with their specific regulations. The incidental capture of images from the public road for the surveillance of buildings or facilities is only legitimate if it is unavoidable to achieve the purpose of monitoring the building or facility."

This specific regulation to which Instruction 1/2009 refers is constituted by the Organic Law 4/1997, of August 4, which regulates the use by the Forces and Citizen security forces in public places, deployed in Catalonia by Decree

134/1999, of 18 May, on the regulation of video surveillance by the police of the Generalitat and the local police of Catalonia and by the Order of 29 June 2001, on the regulation of the means by which information is of the existence of fixed video cameras installed by the police of the Generalitat and the local police of Catalonia in public places, the capture of images in public places - open or closed - is only allowed in

the Forces and the Security Forces with the purpose of guaranteeing public safety, and as long as and when authorization has been obtained from the General Directorate of Security Administration of the Department of the Interior, prior to a favorable report from the Control Commission of video surveillance devices (of which there is no evidence in the present case). In turn, in accordance with what is provided for in article 42 of Law 5/2014, of April 4, on Private Security (hereinafter, LSP), it would be possible for the data controller, through the services provided by a security company, could capture images and sounds through cameras for the purpose of video surveillance of roads and public spaces or public access, provided that prior administrative authorization was obtained from the competent body. In the present case, however, although the video surveillance service was certainly provided by a security company, the Begues City Council has also not proven that the mandatory authorization to carry out the aforementioned treatment had been obtained.

As indicated by the person instructing, during the processing of this procedure the fact described in point 1 of the proven facts section, which is constitutive of the infraction provided for in article 83.5.a) of the 'RGPD, which typifies the violation of the "basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which the principle of minimization is contemplated.

The conduct addressed here has been included as a very serious infraction in article 72.1.a) of the LOPDGDD, in the following form:

"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679."

4. With regard to the fact described in point 2 of the section on proven facts, 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 relating 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 the personal data is obtained, the following information necessary to guarantee a 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 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. It can also be included in the

information device a connection code or an Internet address with this information.

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 Instruction 1/2009, regarding the right to information, determines the following:

"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 accordance with what has been presented, as indicated by the instructing person, the fact recorded in point 2 of the section on proven facts constitutes the violation provided for in article 83.5.b) of the RGPD, which typifies the violation of "the rights of 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 included 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."

5. 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 infringements committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the infringement and establishing the measures to be adopted

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".

In relation to the 2nd proven fact, as has been advanced, from the statement of objections presented before the initiation agreement, it is inferred that the Begues City Council would already inform about the rest of the extremes foreseen in article 13 of the RGPD through the data protection section of its website (<http://www.begues.cat/altres-continguts/proteccio-de-dades/>),

First of all, with regard to this section of the City Council's website, it should be noted that there is no specific information on the processing of images for the purpose of video surveillance using cameras, which is the subject of the present sanctioning procedure.

Indeed, this section of the Council's website provides generic information on the various treatments carried out by the Council of Begues. But with regard to information about certain ends (purpose, legitimacy and communication of data) the web municipality makes a referral to the record of treatment activities (hereafter, RAT) in order to obtain specific information on each of the treatments.

For this purpose, the municipal website links to the electronic headquarters of the City Council, where the interested persons can download the RAT and consult said information. The RAT that can be downloaded from the electronic headquarters of the Begues City Council is a 50-page document and is made up of 16 treatment activities (video surveillance being the 9th).

Given these circumstances, as indicated by the instructing person in the resolution proposal, it must be considered that the information provided, for the purposes of article 13 of the RGPD, is not provided in a concise and easily accessible form (art. 12.1 GDPR).

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 (EDPB) 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, to obtain the complete information, the interested person must consult a part of it in the data protection section of the City Council's website (specifically the information referred to in the words "a" and "b" of Article 13.1 RGPD and sentence "b" of Article 13.2 RGPD); i

another must locate it in the corresponding activity of the RAT (sections “c”, “e” and “f” of art. 13.1 RGPD and sentence “a” of art. 13.2 GDPR).

So, apart from not being able to consider, as already said, that the information about the controversial treatment is easily accessible as required by article 12.1 of the RGPD, it should also be emphasized that in none of the spaces indicated, information is given on the right to submit a claim to the Catalan Data Protection Authority (art. 13.2.d RGPD).

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.

In accordance with everything that has been set out, it is necessary to require the City Council of Begues to facilitate to 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, more specifically the information provided for in clauses “b”, “c”, “e” of art. 13.1 RGPD and clauses “a”, “b” and “d” of article 13.2 RGPD. This information must be provided in a concise, transparent, intelligible and easily accessible form, as required by Article 12.1 of the GDPR.

On the other hand, it is necessary that the informative posters of the existence of the cameras reflect the specific site or website where the affected persons can obtain information about the controversial data processing (current posters refer to an e-mail address, if well the information would be provided through another route). Therefore, if, to obtain more information, a different route is planned than the one currently shown on the signs, it will be necessary to modify this end on the signs and prove it by providing a photograph.

Once the corrective measures described have been adopted, within the period indicated, 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 .

With respect to the 1st proven fact, as explained by the instructing person in the proposed resolution, it is not appropriate to require any corrective measures, given that the City Council accredited before the initiation of the present sanctioning procedure, which had already reduced the scope of vision of the camera installed outside the OAC, so it is considered that the capture of images of the public road is essential for the purpose of preserving security.

For all this, I resolve:

1. Admonish the Begues City Council as responsible for two infringements: an infringement provided for in article 83.5.a) in relation to article 5.1.c); and another violation provided for in article 83.5.b) in relation to articles 12 and 13, all of them of the RGPD.
2. Require the City Council of Begues to adopt the corrective measures indicated in the 5th legal basis and accredit before this Authority the actions carried out to comply with them.
3. Notify this resolution to Begues City Council.
4. Communicate the resolution to the 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,