

## File identification

Resolution of sanctioning procedure no. PS 8/2021, referring to the Cornellà de Llobregat Town Council.

## Background

1. On 11/02/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Cornellà de Llobregat City Council, on the grounds of an alleged breach of the regulations on personal data protection. In particular, the complainant stated that the City Council did not properly exercise the right to information regarding the processing of images through the device installed in the municipality of Cornellà de Llobregat, in the roundabout located between the Passeig dels Ferrocarrils Catalans and the Carretera del Prat de Llobregat (device that checks that a sign prohibiting entry to the Carretera del Prat de Llobregat from the roundabout is respected). The person reporting considered that the City Council did not inform about the following: the existence of said camera, the data of the data protection delegate, the legitimacy of the treatment, the purpose, the recipients of the data, the possibility of exercising the rights, nor did it identify the company that would manage the video surveillance camera.

In turn, the complainant also stated that the Cornellà de Llobregat City Council had addressed a traffic violation complaint (file (...)) using the name "Joana", although "many years ago it changed Joana's name for Janet."

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 55/2020), 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 02/13/2020, the representative of the person reporting was requested to certify that the name of the person reporting had been corrected (Joana by Janet) in the records of the General Directorate of Traffic (hereinafter, DGT); as well as to provide a copy of the reporting person's driver's license.

4. On 02/13/2020 he received an email from the representative of the person making the complaint in which he indicated the following:

- That "the name of Ms. (...) in the Barcelona register and the Civil Registry (change of name). But in no case (unless there is a mistake) in the Provincial Council."
- That the complainant has a certain pathology that does not allow him to drive, which is why he considered it unnecessary to provide a copy of his driver's license.
- That Janet's name appears on the driver's license.
- That the DNI (of which a copy was provided) also shows her correct name (Janet).

In his e-mail, the representative of the person making the complaint informed that in a short period he would provide a copy of the driver's license. However, as part of this prior information, neither the copy of the complainant's driver's license was provided, nor was it proven to have changed the complainant's name in the DGT's records.

5. On 04/06/2020, the reported entity was required to certify how it provided the people affected by the processing of images through the device subject to the complaint, information on the rest of the ends provided for in the article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD) ; as well as in order for him to certify what the name of the person making the complaint was, which was in the DGT records, when the complaint was made for disobeying a no-entry sign on 01/25/2020.

This requirement was reiterated on 07/25/2020.

6. On 31/07/2020, the Cornellà de Llobregat City Council responded to the aforementioned request through a letter in which it stated, among others, the following:

- That in the location where the camera is the subject of the complaint, the City Council had placed two informative signs prohibiting access to the road during specific time intervals.
- That one of the signs indicates that access is controlled by capturing images.  
This sign would conform to the provisions of article 12.8 of Instruction 1/2009, of February 10, on the processing of personal data through video surveillance cameras (hereinafter, Instruction 1/2009).
- That the treatment is legitimate in the fulfillment of a mission in the public interest or the exercise of public powers (art. 6.1.e RGPD).
- That the City Council includes in all the forms a clause that indicates the procedure for exercising the access rights of those affected. The electronic office is also informed of this possibility ([https://seuelectronica.cornella.cat/porta/contenedor.do?det\\_cod=20&ent\\_id=1&idioma=2](https://seuelectronica.cornella.cat/porta/contenedor.do?det_cod=20&ent_id=1&idioma=2)).
- That it is possible that this information can be expanded, considering video surveillance cases. To this end, the City Council provided, together with its letter, a text that it proposed to incorporate into the electronic headquarters, under a specific subsection that

it would be called 'If you want to specifically consult the video surveillance treatments carried out by the City Council, click here'. The City Council stated that it would provide this information once the Authority had validated it.

- That City Council complaints are processed through a certain application and the Catalan Traffic Service database (hereafter, SCT) is used, managing the process through the means of management of the Provincial Council of Barcelona. The name in the complaint (Joana) is the one provided by the Catalan Traffic Service database, based on the information obtained from the vehicle registration.

The reported entity attached various documentation to the letter, including the wording of the informative clause relating to the processing of images using the controversial camera.

7. On 08/11/2020, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that in the section of the electronic headquarters that the Cornellà de Llobregat Town Council identified in its letter of 07/31/2020, the information on data protection that was provided did not specifically refer to the treatment of 'images through cameras for video surveillance purposes. Specifically, it was verified that the information provided was related to the treatment for the purpose of processing the requests made before the City Council.

8. On 09/08/2020, also during this preliminary information phase, the SCT was requested to report on whether the information contained in its database regarding the ownership of the vehicles, is obtained from the records of the DGT; if on 01/25/2020 (the date of the traffic violation complaint) the owner of the vehicle with registration (...)

was listed in the database as "Joana" or "Janet"; as well as if there was any change in the database in relation to the name and surname of the person who owns the said vehicle.

9. On 09/28/2020 the SCT's response to the previous request for information was received. In its letter, the SCT reported the following:

- That the SCT obtains the information contained in its records regarding the ownership of vehicles from the DGT. The database corresponds to the DGT.
- Since it is not an own database, you cannot check the name that it was on date 25/01/2020 of the owner of the vehicle.
- That the SCT does not have access to the historical database on vehicle ownership. It only accesses the personal data of the holder on the date of the query.
- That as of 09/17/2020 the owner of the vehicle is listed as "Janet".

10. By official letter dated 09/28/2020, and still within the framework of this prior information phase, the Authority requested the Barcelona Provincial Traffic Prefecture to report on whether on 01/25 /2020 the owner of the vehicle with registration (...)

she was listed in the DGT records as "Joana" or "Janet"; as well as if there was any change in the database in relation to the name and surname of the owner of the said vehicle from 01/25/2020.

11. On 14/10/2020 he received the response from the Provincial Traffic Prefecture of Barcelona, in which he reported the following:

- That in the Register of drivers and offenders and in the Register of vehicles, both owned by the DGT of the Ministry of the Interior, he is listed both as the owner of the vehicle (...) and as the holder of a driving license, the reporting person with the name "Janet".
- That once a person's affiliation change is processed, it is not preserved in the its records the previous affiliation.

12. On 02/17/2021, the director of the Catalan Data Protection Authority issued an archive resolution regarding the reported conduct related to the lack of information about the existence of the controversial camera and the 'company that would manage it; as well as on the inaccurate treatment of the name of the reporting person. In that resolution, the reasons that led to its archive were justified.

13. Also on 02/17/2021, the director of the Authority agreed to initiate disciplinary proceedings against the Cornellà de Llobregat City Council for the alleged violation provided for in article 83.5.b) in relation to the article 13; all of them from the RGPD. This initiation agreement was notified to the imputed entity on 02/19/2021.

14. On 11/03/2021, the Cornellà de Llobregat City Council made objections to the initiation agreement. The accused entity provided various documentation with its letter.

15. On 03/24/2021, the person instructing this procedure formulated a resolution proposal, for which it proposed that the director of the Catalan Data Protection Authority admonish the Cornellà de Llobregat City Council as responsible of an infringement provided for in article 83.5.b) in relation to article 13, both of the RGPD.

This resolution proposal was notified on 03/25/2021 and a period of 10 days was granted to formulate allegations.

The deadline has been exceeded and no objections have been submitted.

proven facts

The Council of Cornellà de Llobregat informed by means of a poster of the existence of a camera installed in the roundabout located between the Passeig dels Ferrocarrils Catalans and the Carretera del Prat de Llobregat in said locality, which had as its purpose the control, regulation, surveillance and discipline of traffic on public roads.

However, the City Council did not provide the affected persons with information on the other points provided for in Article 13 of the RGPD. In particular, the information was missing

provided for in sections "b", "c" and "e" of article 13.1 and in sections "a", "b" and "d" of article 13.2, both of the 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.

In the statement of objections before the initiation agreement, the Cornellà de Llobregat City Council did not question the alleged facts, but pointed out that it had already provided the persons affected by the processing of images through cameras for control purposes of traffic, the information on all the points provided for in article 13 of the RGPD, through the electronic headquarters. The City Council added that in the drafting of the informative clause published on the electronic site, the considerations made by the Director of the Authority in the initiation agreement in relation to the informative text proposed by the City Council on 07/31/2020. Given the above, the City Council requested the suspension of the sanctioning procedure.

However, as the investigating person explained in the resolution proposal, the adoption of measures to correct the effects of the infringements do not distort the imputed facts, nor do they change their legal classification.

Having established the above, the action of the Cornellà de Llobregat City Council, which has implemented the corrective measures to correct the effects of the infringement, should be positively evaluated.

It should be noted that, in response to the request made in the framework of the previous actions, the City Council already proposed to the Authority a provisional text to provide the people affected by the processing of images for traffic control purposes, the information complete of article 13 of the RGPD.

Regarding the text proposed by the City Council, in the initiation agreement a series of considerations regarding the purpose of the treatment were made, which were taken into account in the informative text that the City Council published on its electronic headquarters ([https://seuelectronica.cornella.cat/portal/contenedor.do?det\\_cod=20&ent\\_id=1&idioma=2](https://seuelectronica.cornella.cat/portal/contenedor.do?det_cod=20&ent_id=1&idioma=2)).

As indicated by the instructing person in the proposed resolution, this diligent action by the City Council must result in it becoming unnecessary to require any corrective measures in this regard.

3. In relation to the facts described in the proven facts section, it is necessary to go to sections 1 and 2 of article 13 of the RGPD, which establish the information that must be provided when personal data is obtained of the person concerned:

"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) if applicable, 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, reference to guarantees adequate or appropriate and the means to obtain a copy of these or the fact that they have been borrowed.

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."

In turn, sections 6 and 8 of article 12 of Instruction 1/2009 establish that:

"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 office, 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. (...)

12.8. In fixed cameras for the control, regulation, surveillance and discipline of traffic on public roads, the content of the sign may be limited to reporting the existence of the camera or speed control device, without prejudice to the that establishes section 6 of this article."

During the processing of this procedure, the fact described in the section on proven facts has been duly proven, which is constitutive of the violation provided for in article 83.5.b) RGPD, which typifies the violation of "the rights of the interested parties in accordance with articles 12 to 22", among which there is that provided for in article 13 of the 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."

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".

As indicated by the instructing person in the resolution proposal, in the present case it is not appropriate to require any corrective measures, given that the City Council already provides the interested parties, through its electronic headquarters, with information on all the planned points in article 13 of the RGPD in relation to the processing of images for traffic control purposes.

For all this, I resolve:

1. Admonish Cornellà de Llobregat City Council as responsible for an infringement provided for in article 83.5.b) in relation to article 13, both of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to Cornellà de Llobregat Town Council.

3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. 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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