

## File identification

Resolution of sanctioning procedure no. PS 50/2021, referring to the City Council of La Portella.

## Background

1. On 12/06/2020, the Catalan Data Protection Authority received a letter from a person filing a complaint against La Portella City Council, on the grounds of an alleged breach of the regulations on personal data protection.

In particular, the person making the complaint stated that the La Portella City Council had installed a video surveillance camera in the micro-disposal which captured images of the people who used it. The person making the complaint added that some neighbors had told him that, when the mayor considered that someone was not using the micro-dispensary correctly, he would call that person or send him a WhatsApp message to reprimand him for that behavior.

The person making the complaint stated that "expressly, I left certain waste on the ground outside the container" and asserted that subsequently the mayor sent him a WhatsApp (which he transcribed), in which he indicated that the waste he had left on the ground (outside the bins) was a container that had to be placed in the yellow bin.

2. The Authority opened a preliminary information phase (no. IP 160/2020), 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 25/06/2020, the Authority's inspector staff went to the micro-disposal that was the subject of the complaint and found, among others, the following:

- In front of which the Benavent-Portella Progressive Agricultural Cooperative was located microdeixalleria, which was a closed wooden enclosure.
- That on the facade of the said cooperative, located in front of the access door to the micro-dispensary, there was a camera installed that would focus on the micro-dispensary.
- That another camera was installed inside the micro store.
- That the existence of the cameras was reported by means of an informative poster.

4. On 06/29/2020, also during this preliminary information phase, the reported entity was required to inform, among others, what was the purpose of the processing of images through of the interior and exterior cameras of the micro store; like this

as if the images captured by said cameras had been used to check that the waste was deposited correctly. In turn, the City Council of La Portella was also required to provide a photograph of the field of view of each of the cameras installed inside and outside the micro-repository.

5. On 07/10/2020, La Portella City Council responded to the above-mentioned request in writing, in which it set out, among others, the following:

- That he was responsible for the treatment of the images captured through the cameras installed in the micro store.
- That the purpose of the treatment "is to avoid the vandalism that exists because of our uncivil municipality."
- That the images captured by said cameras had not been used to check that the waste was deposited correctly.

The reported entity did not provide the photograph of the field of vision of the cameras installed in the micro-reserve.

6. Given that the City Council did not provide the required photograph and denied having used the images captured by the cameras installed in the micro-disposal to check if the waste was deposited correctly, on 07/22/2020 it was again required to the City Council of La Portella in order to confirm whether the mayor had sent any WhatsApp message to the inhabitants of the municipality in the terms indicated, taking into account that the person making the complaint had transcribed in his letter of complaint the WhatsApp message that he would have sent the mayor in which he was informed about in which container a certain waste should be deposited. Also, it was reiterated to the City Council to provide a photograph referring to the field of vision of each of the cameras installed inside and outside the micro store.

7. On 04/08/2020, the City Council of La Portella responded to the second request in writing in which it asked for an extension of the deadline to respond to the request.

Along with that letter, the City Council provided a photograph of the field of focus, on 24/07/2020, of each of the cameras installed inside (1 camera) and outside the micro-reserve (3 cameras: "Deixalleria" camera, "Piscines 1" camera and "Camí Piscines" camera). Within the field of focus of the "Piscines 1" and "Camí Piscines" cameras, there was no micro-reservoir.

8. On 16/09/2020, the request was reiterated to confirm whether the mayor had sent any WhatsApp messages to the inhabitants of the municipality. Likewise, the Consistory was also required to report on whether the exterior cameras "Piscines 1" and "Camí Piscines" were part of the video surveillance system to control micro-littering.

9. On 09/10/2020, the City Council of La Portella responded to the third request through a letter in which it stated, among others, that there was no record of whether the mayor had sent any message in the terms indicated by the reporting person.

On the other hand, the City Council specified that the "Piscines 1" and "Camí Piscines" cameras they were part of the video surveillance system to control the micro store, since "it is the access road and is the path used by the "thieves" when they have stolen or damaged the micro store."

10. On 13/10/2020, as part of the previous information, a fourth request was made to the City Council of La Portella in order to provide the mayor's testimony in relation to whether he had sent any message of WhatsApp to the inhabitants of the municipality, in which it informs the recipient about the correct container in which to deposit a certain waste that had not been deposited correctly in the micro-disposal. And in relation to the 3 exterior cameras that made up the video surveillance system of the micro-reserve (cameras "Piscines 1", "Camí Piscines" and "Deixalleria"), the City Council was required to inform, among others, whether the images were viewed by members of a police force; if the video surveillance service was provided by a security company; as well as if you had the authorization issued by the General Directorate of Security Administration of the Department of the Interior, to capture images of the public road through these cameras.

This requirement was reiterated on 11/10/2020.

11. On 11/11/2020, the City Council of La Portella complied with this request by means of a letter stating the following:

- That after a casual visit to the municipal waste services, a misuse of the service was observed and consequently the images of the uncivil acts were reviewed and this misuse was communicated to the neighbor.
- That the person authorized to access the images is the mayor.
- That the images are not viewed by a police force.
- That authorization is being processed to be able to capture images of the public road.

12. By official letter dated 06/09/2021, the complainant was requested to specify the date on which the mayor of La Portella sent him the WhatsApp message that was the subject of the complaint; as well as providing a photograph or capture of its content.

13. On 11/06/2021, a fifth request was made to La Portella City Council to provide a copy of the record of treatment activities (hereafter, RAT) and, in relation to the video surveillance system installed in the micro-repository, a copy of the information provided to the affected persons in relation to the processing of their data

for video surveillance purposes, apart from that facilitated through the informative poster of the existence of the cameras.

This requirement was reiterated on 07/26/2021.

14. On 28/07/2021, the City Council of La Portella provided, among others, the following documentation:

- a. The "Data Protection Manual of [the] City Council [of] La Portella". One of the annexes of this manual (which are not numbered) is the City Council's RAT. For all treatment activities, the RAT indicates the name and contact details of the person responsible for the treatment.

Regarding the "VIDEO SURVEILLANCE" treatment activity, the RAT states that the purpose is to "Comply with the legal obligations imposed on the activity", "Preserve the security of persons and goods as well as their facilities" and Video surveillance of large infrastructures: stations, airports, large areas (massive video surveillance)."

Regarding this processing activity, the RAT provided does not contain the following mandatory information in accordance with article 30 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of individuals physical with regard to the processing of personal data and the free movement thereof (hereafter, RGPD):

- The name and contact details of the data protection delegate (art. 30.1.a RGPD).
- The category of interested parties (art. 30.1.c RGPD).
- The general description of technical and organizational security measures (art. 30.1.g GDPR).

On the other hand, also in relation to the aforementioned treatment activity, the RAT indicated the following information which would not be exact or specific:

- That the legal basis (art. 31.2 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights - henceforth, LOPDGDD-) that legitimizes the treatment is, on the one hand, compliance with a legal obligation; and, on the other, legitimate interest (art. 6.2.f RGPD states that legitimate interest does not apply to treatments carried out by public authorities in the exercise of their functions).
- That the data will be kept (art. 30.1.f RGPD) "During the period established by the current regulations". Therefore, a generic indication is used that does not specify the data deletion term.
- That the source of the data (non-mandatory information) is third parties (that is, it is indicated that the data is not obtained directly from the affected person). In

in the present case, it is clear that the data is collected through cameras directly from the affected people themselves.

- That one of the purposes is the video surveillance of "large infrastructures" such as "stations, airports, grandes superficies (mass video surveillance)", although the municipality of La Portella does not have this type of infrastructure (and in case exist, I would not be responsible for the treatment).

In turn, it should be noted that the RAT identifies an employee of the City Council through his first and last name and position and specifies what the processing operations are, information that should not be included in the RAT that it must be made public in accordance with article 31.2 of the LOPDGDD.

- b. The informative document on the processing of personal data for video surveillance purposes. In this document it is reported that the treatment has as its object the same purposes indicated in the RAT.

In this document, the following information would not be provided to the affected persons, which is required in accordance with article 13 of the RGPD:

- The recipients of the data (art. 13.1.e RGPD).
- The data retention period (art. 13.2.a RGPD).
- The right to submit a claim to this Authority (art. 13.2.d RGPD).

On the other hand, regarding the legal basis, information is provided that would not be accurate. Specifically, from said document it is inferred that the legal basis that would legitimize the treatment is the consent of the affected person (this conclusion is reached because the document is entitled "information and consent" and it is indicated that the person can withdraw consent granted). Taking into account that the City Council of La Portella does not collect with respect to all the people affected by the treatment for the purposes of video surveillance, the free, specific, informed and unequivocal consent of all the people; as well as the information provided through the RAT (consent is not included as a legal basis for the "video surveillance" activity), it can be concluded that this would not be the legal basis that would legitimize the treatment.

15. On 03/08/2021, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet on the RAT's advertising. Thus, it was found that the privacy policy and the legal notice of the La Portella Town Council website ([laportella.cat](http://laportella.cat)) did not contain any information about the RAT.

In turn, it was verified that in the section of the Transparency Portal (which is accessed through the electronic headquarters) where it should be possible to consult the RAT (<https://www.seu.e.cat/ca/web/laportella/open-government-and-transparency/institutional-and-organizational-information/personal-data-protection/record-of-personal-data-processing-activities>), this is not published

16. On 08/08/2021, the person making the claim responded to the request for information made by official letter dated 06/09/2021, reporting that he received the WhatsApp message that was the subject of the complaint on 04/07/ 2020 Likewise, the reporting person provided a capture of said message.

17. On 18/10/2021, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against La Portella City Council for 4 alleged infringements: an infringement provided for in article 83.5.a) of the RGPD in relation to article 5.1.c); another offense provided for in article 83.5.a) in relation to article 5.1.b); a third offense provided for in article 83.4.a) in relation to article 30.1; and a fourth violation provided for in article 83.5.b) in relation to articles 12 and 13; all of them from the RGPD.  
This initiation agreement was notified to La Portella City Council on 10/20/2021.

In the initiation agreement, the City Council was granted a period of 10 working days to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests.

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

18. On 01/17/2022, the instructor of the procedure made a series of checks via the Internet on the alleged facts relating to the lack of publicity of the RAT. Thus, it was found that the RAT was not published in the section of the Transparency Portal (accessed through the electronic headquarters), nor was its content mentioned in the sections of the municipal website corresponding to the policy of privacy and the legal notice, which was recorded in the file.

proven facts

1. La Portella City Council installed a video surveillance system made up of 3 cameras (cameras called "Deixalleria", "Piscines 1" and "Camí Piscines") outside the micro-reserve in order to guarantee safety of the facility (specifically, to avoid uncivil acts).

As can be seen from the images provided by the City Council (captured on 24/07/2020), by means of these cameras, images of people traveling on public roads were captured beyond what was unavoidable to achieve the security purpose of the installation, at least, until 24/07/2020.

2. During the month of April 2020, the mayor of La Portella viewed the video surveillance system, to identify a person (the complainant here) who had left waste outside the containers, with whom he contacted to correct this behavior.

In the RAT and in the document drawn up by the City Council so that the people affected by the processing for the purposes of video surveillance can obtain more information, it is specified that the purpose of data processing through cameras (including those that make up the video surveillance system of micro-trading) are "Complying with the legal obligations imposed on the activity", "Preserving the security of people and goods as well as their facilities" and "Video surveillance of large infrastructures: stations, airports, large areas (massive video surveillance)."

Therefore, the data relating to the reporting person were treated for a purpose different and incompatible with that for which they had been collected.

3. The RAT drawn up by the City Council does not include all the information required by article 30 of the RGPD. In particular, and with regard to the treatment activity called "video surveillance", it does not contain the information relating to the name and contact details of the data protection delegate (art. 30.1.a RGPD), in the category of interested parties (art. 30.1.c RGPD), nor is there a general description of technical and organizational security measures (art. 30.1.g RGPD).

In turn, the RAT includes information that would not be accurate, such as:

- That the legal basis (art. 31.2 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights - henceforth, LOPDGDD-) that legitimizes the treatment is, on the one hand, the fulfillment of a legal obligation; and, on the other, legitimate interest (art. 6.2.f RGPD states that legitimate interest does not apply to processing carried out by public authorities in the exercise of their functions).
- That the data will be kept (art. 30.1.f RGPD) "During the period established by the current regulations". Therefore, a generic indication is used that does not specify the data deletion term.
- That the source of the data (non-mandatory information) is third parties (that is, it is indicated that the data is not obtained directly from the affected person). In the present case, it is clear that the data is collected through cameras directly from the affected people themselves.
- That one of the purposes is the video surveillance of "large infrastructures" such as "stations, airports, grandes superficies (mass video surveillance)", although the municipality of La Portella does not have this type of infrastructure (and in case exist, I would not be responsible for the treatment).

Finally, indicate that the City Council of La Portella does not make public the inventory of treatment activities through electronic means.

4. In relation to the processing of images for video surveillance purposes, the City Council of La Portella did not make available to the affected persons all the information provided for in article 13 of the RGPD.

Specifically, in the document that the City Council has drawn up for this purpose, there is no information about the recipients of the data (art. 13.1.e RGPD), the retention period of the data (art. 13.2.a RGPD) and the right to submit a claim to this Authority (art. 13.2.d RGPD).

In accordance with article 22.4 of the LOPDGDD, second paragraph, the person in charge of the treatment must keep at the disposal of the affected persons the information referred to in the RGPD, which includes the information that indicates article 13 RGPD, which the City Council has omitted.

With regard to Instruction 1/2009, article 12.6 establishes the obligation to provide, among other information, that provided for in article 5.1.a) of the former LOPD, referring to the recipients of the information, as follows:

"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."

On the other hand, the information provided through said document regarding the legal basis would not be accurate, given that it is pointed out that the treatment is based on consent (legitimacy that differs from that indicated in the RAT).

#### 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. In accordance with article 64.2.f) of the LPAC and in accordance with what is indicated in the agreement initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the City Council of La Portella has not made any objections to the initiation agreement. This agreement contained a precise statement of the imputed liability.

3. Legal classification of the imputed facts.

- 3.1. In relation to the conduct described in point 1 of the Proven facts section, it is necessary to go to article 5.1.c) of the RGPD, which provides that personal data will be "adequate, relevant and limited to what is necessary in relation with the ends for those who are treated".

For its part, article 22.2 of the 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."

In the present case, the capture of images was not carried out by a police force. In turn, the City Council had also not commissioned a security company with the video surveillance service, so that the assumption provided for in article 42 of Law 5/2014, of April 4, on Private Security did not apply. This fact must be considered proven to the extent that in the reserved information phase the City Council acknowledged it in the letter it presented on 11/11/2020, and that in the allegations phase in the 'agreement to initiate the present sanctioning procedure, the City Council has not made any statement against it.

On the other hand, through the cameras installed outside the micro-reserve, the City Council captured images of people traveling on the public road beyond what was unavoidable to achieve the safety purpose of the installation. Iation This imputed fact must be considered proven to the extent that in the reserved information phase

On 08/04/2020, the City Council provided images captured on 07/24/2020, illustrative of this extreme.

This imputed fact constitutes an infringement, according to the provisions of article 83.5.a) of the RGPD, which typifies as such the violation of "the basic principles of the treatment, including the conditions for the consent to the tenor of the 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."

3.2. With regard to the conduct described in point 2 of the Proven Facts section, it is necessary to refer to article 5.1.b) of the RGPD, which regulates the principle of purpose limitation by establishing that personal data will be "collected with specific, explicit and legitimate purposes, and will not be subsequently treated in a manner incompatible with said purposes; in accordance with article 89, paragraph 1, the subsequent processing of personal data for archiving purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes".

For its part, it is also appropriate to refer to article 6.1 of Instruction 1/2009, which provides the following.

"6.1 In accordance with the principle of data quality, images, and where appropriate voices, can only be captured and processed through video surveillance systems for specific, explicit and legitimate purposes.

The images, and where appropriate the voices, captured for a specific purpose cannot be used for a different purpose, except with the consent of the person holding it or that a law authorizes it."

This imputed fact must be considered proven to the extent that, on the one hand, in the reserved information phase, the City Council presented a letter to the Authority on 11/11/2020 in which it acknowledged that the mayor he had reviewed the recorded images, and had communicated to a neighbor a misuse of the garbage service.

It is worth noting that it would be legitimate to install a video surveillance system in order to guarantee the proper functioning of the public waste disposal service. The illegality that is predicated in the present case lies in the fact that, both in the RAT and in the document prepared by the City Council so that the people affected by the treatment for the purposes of video surveillance could obtain more information, it was pointed out that the purpose of capturing images was the fulfillment of legal obligations and the safety of people and property. Instead, the mayor accessed the recorded images for a different purpose and incompatible with the stated purposes, violating the purpose limitation principle.

This imputed fact is constitutive of the infringement provided for in article 83.5.a) of the RGPD, previously transcribed.

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

"d) The use of the data for a purpose that is not compatible with the purpose for which they were collected, without having the consent of the affected person or a legal basis for this."

3.3 With regard to the conduct described in point 3 of the Proven Facts section, referring to the RAT, it is necessary to go to article 30.1 of the RGPD, which provides the following:

"1. Each person in charge and, where appropriate, their representative will keep a record of the processing activities carried out under their responsibility. Said register must contain all the information indicated below:

- a) the number and contact details of the person in charge and, where appropriate, the co-person in charge, the representative of the person in charge, and the data protection officer;
- b) the purposes of the treatment;
- c) a description of the categories of interested parties and the categories of personal data;
- d) the categories of recipients to whom the personal data will or will be communicated, including recipients in third countries or international organizations;
- e) where appropriate, the transfers of personal data to a third country or an international organization, including the identification of said third country or international organization and, in the case of the transfers indicated in article 49, section 1, second paragraph, the documentation of adequate guarantees;
- f) when possible, the deadlines for the deletion of the different categories of data;
- g) when possible, a general description of the technical and organizational security measures referred to in article 32, section 1."

In turn, article 31 of the LOPDGDD, also in relation to the RAT, establishes that:

"1. Those responsible and in charge of the treatment or, where applicable, their representatives must keep the record of treatment activities referred to in article 30 of Regulation (EU) 2016/679, unless the exception is applicable which provides for its section 5.

The register, which can be organized around structured sets of data, must specify, according to its purposes, the processing activities carried out and the other circumstances established by the aforementioned Regulation.

When the person in charge or the person in charge of the treatment has designated a data protection delegate, they must notify him of any additions, modifications or exclusions in the content of the register.

2. The subjects listed in article 77.1 of this Organic Law must make public an inventory of their processing activities accessible by

electronic media that must contain the information established in article 30 of Regulation (EU) 2016/679 and its legal basis."

For its part, article 6 bis of State Law 19/2013, of December 9, on transparency, access to public information and good governance, determines that:

"The subjects listed in Article 77.1 of the Organic Law on the Protection of Personal Data and Guarantee of Digital Rights must publish their inventory of processing activities in application of Article 31 of the aforementioned Organic Law."

This imputed fact must be considered proven to the extent that during the reserved information phase the City Council provided on 07/28/2021 the document "Manual de protección de datos de [l']Ajuntament [de] la Portella ", which contained in an annex the City Council's RAT, with the erroneous or insufficient information indicated in the section on proven facts; and that before the imputation of this fact made in the agreement to initiate the sanctioning procedure, the City Council has not made any allegation, being able to make it.

This imputed fact constitutes an infringement, according to the provisions of article 83.4.a) of the RGPD, which typifies as such the violation of "the obligations of the responsible and of the manager pursuant to articles 8, 11, 25 to 39, 42 and 43", among which there is the one provided for in article 30 of the RGPD.

In turn, this conduct has been included as a minor infraction in article 74.I) of the LOPDGDD, in the following form:

"I) Have a record of treatment activities that does not include all the information"

On the other hand, it has also been proven, from the checks carried out by the Authority on 03/08/2021 and 17/01/2022, that the inventory of treatment activities of the City Council was not published in electronic media.

3.4. With regard to the conduct described in point 4 of the Proven facts section, 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, in your case;
- f) in its case, the intention of the person responsible 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 transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, reference to 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. 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."

This imputed fact must be considered proven, to the extent that, on the one hand, in the reserved information phase, the City Council provided on 07/28/2021 the informative document on the processing of personal data for the purposes of video surveillance (complementary to the information provided through the information poster about the existence of the cameras), which did not contain all the information required by article 13 of the RGPD, in addition to containing incorrect information. And on the other hand, given the imputation of this fact made in the agreement to initiate the sanctioning procedure, the City Council has not made any allegation, being able to make it.

This imputed fact constitutes an infringement, according to the provisions of 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", between which have 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."

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 (...)".

By virtue of this faculty, the City Council of La Portella should be required to, as soon as possible, and in any case within a maximum period of 10 days from the day after the notification of this resolution, bring to terms the following actions:

- 4.1. With regard to the 1st proven fact, regarding the viewing of the video surveillance cameras installed outside the micro store (cameras called "Deixalleria", "Piscines 1" and "Camí Piscines"): take the necessary actions to avoid capture images of people traveling on public roads beyond what is unavoidable to achieve the security purpose of the installation.
- 4.2. With regard to the 2nd proven fact, relating to the viewing of the images captured by the mayor in order to identify a resident of the municipality who had left waste outside the containers with whom he contacted to correct this behavior: given that it is a one-time event, which exhausted its effects when the mayor sent a WhatsApp message to the said neighbor, no corrective action should be required.
- 4.3. Regarding proven fact 3, relating to the RAT:
  - Regarding the processing activity called "video surveillance", include the following information: the name and contact details of the data protection delegate (art. 30.1.a RGPD), the category of interested parties (art. 30.1.c RGPD), and a general description of technical and organizational security measures (art. 30.1.g RGPD).
  - Correct the following data listed there:
    - The information on the legal basis that legitimizes the treatment (it is not the consent).
    - The information on the retention period of the data (a referral is made generic).
    - The information about the origin of the data (it is wrongly stated that the data are obtained from third parties).
    - Information on one of the purposes of video surveillance (erroneous mention is made of "large infrastructures" and "stations, airports, large areas").
  - Publish the inventory of treatment activities through electronic means.

4.4. With regard to proven fact 4, regarding the capture of images through video surveillance cameras without providing all the information provided for in article 13 of the RGPD in the information document on the processing of personal data for video surveillance purposes:

- Add the following information: the recipients of the data (art. 13.1.e RGPD); the data retention period (art. 13.2.a RGPD), and the right to submit a claim to this Authority (art. 13.2.d RGPD).
- Correct the following information on the legal basis that would legitimize the treatment: correct the title ("information and consent"), delete the sentence where it is indicated that the person can withdraw the consent granted, and add the correct legal basis that legitimizes the treatment.

Once the corrective measures described have been adopted, within the specified period, the City Council of La Portella must inform the Authority within the following 10 days, without prejudice to the authority's inspection powers to make the corresponding checks.

For all this, I resolve:

1. Admonish La Portella City Council as responsible for 4 infractions: an infraction provided for in article 83.5.a) of the RGPD in relation to article 5.1.c); another offense provided for in article 83.5.a) in relation to article 5.1.b); a third offense provided for in article 83.4.a) in relation to article 30.1; and a fourth violation provided for in article 83.5.b) in relation to articles 12 and 13, all of them of the RGPD.
2. To require the City Council of La Portella to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions carried out to comply with them.
3. Notify this resolution to La Portella 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](http://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



Autoritat Catalana de Protecció de Dades

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of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the accused entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with what they foresee 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,