

File identification

Resolution of sanctioning procedure no. PS 83/2022, referring to the Parets del Vallès Town Council.

Background

1. On 16/08/2021, the Catalan Data Protection Authority received a complaint against Parets del Vallès City Council, due to an alleged breach of the regulations on personal data protection.

In particular, the complainant stated that, in the communications room of the new Local Police station of the Parets del Vallès Town Council, there were screens installed on which real-time recordings of different public spaces were displayed, which were visible to anyone entering the reception of this police station or who was in the waiting room. And he added that this space was not marked as a video surveillance area .

In order to substantiate his complaint, he provided a photographic image (created on 16/08/2021), captured from what appeared to be the reception of the police station, in which an office (the communications room) was visualized with the open door, in which there was a panel with screens showing images captured through video surveillance cameras. The walls and the glass door of this office were translucent, except for an intermediate horizontal strip, which was transparent and allowed the images broadcast through said screens to be viewed. The reporting person provided a second photographic image (created on 16/08/2021) of a close-up of these screens, on some of which the date (16/08/2021) and the time (7 :00 h) in which the recording was made that was played back in real time.

2. The Authority opened a preliminary information phase (no. IP 328/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 20/06/2022 the Parets del Vallès City Council was required to report on several issues related to the events reported.

4. On 07/05/2022, the Parets del Vallès City Council responded to the aforementioned request through a letter in which it stated the following:

— *"The events reported refer to August 16, 2021, but the new offices of the Parets del Vallès Local Police were not inaugurated until October 23, 2021. During the last days of July and throughout the in August 2021, the conditioning tasks of the new premises of the Local Police were carried out. It is not possible to specify exactly on which date the new facilities were fully conditioned, but this occurred at the end of August and beginning of September 2021".*

— *"Regarding the visualization of the images from the reception and the police waiting room, you can see from these spaces the existence of some screens with images, but the vinyl on*

the windows and the distance prevent distinguish specific people or activities. The police station where the screens are located is an office to which the public does not have access.

It is accompanied by a photograph in which you can see the existence of some screens with images and the vinyl of the glasses (...)."

In the photographic image provided by the City Council, unlike the image provided by the person making the complaint, it was possible to visualize the placement of a vinyl with translucent horizontal stripes in the space of the glass of the walls and the door that before it was transparent, an installation that made it difficult to see the interior. The office appeared with the glass door closed, in which the same vinyl had also been installed.

— "As mentioned above, on the date of the events reported, the conditioning tasks of the new outbuildings were being carried out. The new premises of the Local Police coexisted for a short period of time with the old premises as it was very complicated to carry out the complete transfer of the facilities and all the workers, without causing an affectation in the police tasks. Before accessing the police stations and inside, there is a video-surveillance area sign .

Attached is a photograph of the exterior poster and the interior poster (...)."

In the two photographic images provided by the City Council, two informative posters of the installation of video surveillance cameras could be seen; one poster was located outside the police station building, next to the front door, and a second poster was located in what appeared to be the interior of the police station, in a passageway, on a wall exterior of a police station office.

The two posted posters conformed to the content and design provided for in the annex to Instruction 1/2009, of February 10, 2009, on the processing of personal data through video surveillance cameras.

5. On 09/11/2022, 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 news section of the municipal website www.parets.cat there was published a news item dated 07/28/2021, with the title *"The Local Police of Parets is moving to the new police station"*, which was echoed by several digital newspapers. In this news, the following was pointed out, among other things:

"It will come into operation from Thursday, July 29

From tomorrow, July 29, the Local Police of Parets will provide service to the new municipal offices located in the Coure building on Carrer la Volta.

The new police station, located in the Coure building, in the old IVECO sector, will open on July 29.

The hours will be 24 hours a day, every day of the year at the La Volta Municipal Services, located on Carrer de la Volta, number 2, 1st floor, room 1 (...)"

A due diligence was carried out to record the result obtained.

6. On 15/11/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Parets del Vallès Council, for two alleged infringements: a

very serious infringement provided for in the article 58. *f* in relation to article 16.5; and a serious infringement provided for in article 54. *f* in relation to article 6.1. *f* , all of them from Organic Law 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and execution of criminal sanctions (from now on, LO 7 /2021). This initiation agreement was notified to the aforementioned City Council on 11/16/2022.

7. 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.

8. On 29/11/2022, the Parets del Vallès Town Council formulated allegations in the initiation agreement .

9. On 23/03/2023, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the Parets del Vallès Town Council as responsible for two violations: a very serious violation provided for in article 58. *f* in relation to article 16.5; and a serious infringement provided for in article 54. *f* in relation to article 6.1. *f* , all of them from LO 7/2021.

This resolution proposal was notified on 03/23/2023 and a period of 10 days was granted to formulate allegations.

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

proven facts

1. On 07/29/2021, the new branches of the Local Police station of the Parets del Vallès Town Council went into operation, inside and outside which a system of video surveillance that recorded images of people entering the police station, without placing the corresponding informative posters of the existence of the cameras.

This situation was maintained for an indeterminate period of time, between 29/07/2021 (when the provision of the service at the new police stations began) and the end of August or the beginning of September 2021, as it appears of the statements made by the City Council in the letter dated 07/05/2022 presented to the Authority.

The City Council accompanied this letter with two photographs, in which the placement of two informational posters about the existence of the cameras (one next to the entrance door of the police station and one second in an interior space of this). These posters conform to the content and design provided for in the annex to Instruction 1/2009, of February 10, 2009, on the processing of personal data through video surveillance cameras.

2. In the reception area of this police station there is an office (communications room) , in which a panel has been installed with screens where the recordings of images of interior public spaces are reproduced in real time and exteriors of the municipality through which people pass, captured through video surveillance cameras. The walls and the glass door of this office are translucent, except for an intermediate horizontal strip, which was initially transparent and allowed to visualize the interior of the office, and therefore also the images

that were transmitted through said screens . In certain cases, the images would include identifiable people, which would have been exposed to everyone entering the reception area or waiting room of the new police station.

This situation would have been maintained for an indeterminate time between 29/07/2021 (the date on which the provision of the service at the new police stations began) and the end of August or the beginning of September 2021, as can be seen from the statements made by the City Council in the letter dated 07/05/2022.

Together with this letter presented to the Authority on the same date (07/05/2022), the City Council has certified, by means of a photograph, the placement in the aforementioned office of a vinyl with translucent horizontal stripes in the space of the glass of the walls and the door that was previously transparent, in order to make it difficult to see the interior and therefore the aforementioned panel of screens.

Fundamentals of law

1. LPAC and article 15 of Decree 278/1993 apply to this procedure , according to the provisions of DT 2a of Law 32/2010, of October 1, of the Authority 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 fact proven first, relating to the lack of placement of informative posters of the capture of images through video surveillance cameras.

In relation to the fact imputed 1st of the initiation agreement, in the statement of allegations to the initiation agreement the Parets del Vallès City Council gave as reproduced the manifestations it made in the phase of previous information that preceded this sanctioning procedure (henceforth, previous phase) through a letter dated 07/05/2022. In this letter he stated, in essence, that the new premises of the Local Police had not been inaugurated until 23/10/2021, and that before that conditioning work had been carried out.

In this regard, it should be noted that, regardless of the date on which the new police stations were inaugurated, what is relevant here is the date on which the City Council began recording images through the cameras of video surveillance installed in these departments and, consequently, started the recording of images of people entering the new police departments ; and this because the fact that among the images captured during this initial period there were images of identified or identifiable people (both municipal workers and users of the police service) entailed the processing of personal data (art. 5. b LO 7 / 2021), and as such had to comply with the applicable data protection regulations.

Regarding the *days a quo* or the date on which the City Council began these recordings of personal data, although the Authority does not know, this would have been prior to 10/23/2021, when the City Council stated that they would have inaugurated the new police departments. This conclusion was reached based on the fact that, in the previous phase, the

Authority noted that the City Council had announced on its website that the new police station would become operational on 07/29/2021. This, together with the fact that, on 08/16/2021, the complainant submitted to the Authority the letter of complaint in which he complained about the lack of informational posters of the video surveillance system at the new police stations, and that in the preceding phase the City Council stated the following in response to the question posed by the Authority on whether on the date of the reported events (16/08/2021) it had complied, and in what way, with the right to 'information (and to prove it): " *it is not possible to specify exactly on which date the new facilities were fully conditioned, but this occurred at the end of August and the beginning of September 2021* ". With this statement, he seemed to be referring to the installation of the mandatory information posters on a date included in the period he indicated (end of August or beginning of September), and not before, so the alleged facts referred to the lack of information posters have been limited to the period of time prior to that indicated by the City Council. In any case, the City Council has not proven to the Authority that it had installed information posters on the date of the events reported (16/08/2021), nor in the period indicated in the now proved fact 1.

According to what has been set out, this allegation cannot succeed.

2.2. In relation to proven fact 2, in the statement of objections to the initiation agreement the Parets del Vallès City Council reiterated the statements made in the previous phase, regarding the fact that the City Council had carried out the necessary actions to make it difficult, by placing a vinyl with translucent horizontal stripes, for people entering the new police station to be able to visualize the interior of the communications room, in which the panel was located of screens It is added that, in any case, these users did not access the communications room.

In this regard, it should be noted that, although it is true that on 07/05/2022 the City Council provided the Authority with a photographic image showing that a vinyl had been placed in the communications room the space that was previously transparent, making it difficult to see the interior, it was not credited that this vinyl had been placed on a date prior to 07/05/2022. In any case, he did not prove that he would have placed it in the period referred to the 2nd proven fact, which, following the manifestations of the City Council, was limited to the period between 07/29/2021 - in which began providing the service at the new police stations—and at the end of August or beginning of September 2021. In any case, the City Council did not prove to the Authority that it had placed the vinyl on the date of facts reported (16/08/2021), nor in the period indicated in the now proved fact 2.

Lastly, it should be clarified that the fact that the people who entered the police station did not have access to the communications room is something that is not part of the imputed facts, nor can it be used to exonerate the City Council from responsibility, since it has been proven that, in the period referred to, the images shown on the screen panel could be viewed from the reception area of the police station and from the waiting room, where people using the police service could access from 29/07/2021.

In accordance with what has been stated, this allegation cannot succeed.

3. Legal qualification of the proven facts.

In the matter of police video surveillance, it is necessary to comply with the provisions of LO 7/2021, in force on 06/15/2021, article 15.2 of which establishes the following:

"2. In the installation of image and sound recording systems, the following criteria will be taken into account, in accordance with the principle of proportionality: ensuring the protection of buildings and own facilities; ensure the protection of buildings and public facilities and their accesses that are under custody (...)."

This rule repeals, although only in what it opposes, the regulations applicable to police video surveillance established until then by Organic Law 4/1997, of August 4, which regulates the use of video cameras by Forces and Security Forces in public spaces (henceforth, LOV).

Below are the violations corresponding to the facts proven:

3.1. In relation to the conduct described in point 1 of the proven facts section, regarding the right to information, first of all it is necessary to go to article 16.5 of LO 7/2021 which, in relation to the installation of fixed video cameras, states that: *"The citizens will be informed in a clear and permanent way of the existence of these fixed video cameras, without specifying their location, as well as of the authority responsible for the treatment before which they can exercise their rights."*

On the other hand, article 11.3 of Decree 134/1999, of 18 May, regulating video surveillance by the police of the Generalitat and the local police of Catalonia, provides that: *" The design, the format and the location of information plates or signs (panels) will be regulated by an order of the Minister of Government."*

And the Order of 29 June 2001, regulating the means by which the existence of fixed video cameras installed by the police of the Generalitat and the local police of Catalonia in public places is reported, in the article 3.3 provides that: *"When the installation of the video cameras has been requested by the mayor, with regard to the local police facilities in his municipality, the design and characteristics of the plate have to adjust to the model established in annex 2 of this Order."*

During the processing of this procedure, the alleged fact 1 of the initiation agreement has been duly proven, taking into account the following set of circumstances: the date on which the new police station came into operation (29/07/ 2021); the complaint referring to the lack of information posters; the lack of accreditation that the City Council had placed on them at the time it started recording images; and his imprecise response to the Authority's request, in the previous phase, regarding the existence of information posters on the date the complaint was submitted (16/08/2021), as well as the affirmation of City Council alluding to the placement of information posters at the end of August 2021 or at the beginning of September of the same year.

The omission of the indicated information plates or posters is constitutive of the very serious infringement provided for in article 58. f of LO 7/2021, which typifies as such:

"f) The omission of the duty to inform the interested party about the treatment of their personal data in accordance with the provisions of this Organic Law."

3.2. With regard to the conduct described in point 2 of the proven facts section, regarding security measures, it is necessary to go, first of all, to article 6.1. f of LO 7/2021, which provides that personal data must be: *"Treated in such a way as to guarantee adequate security, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage . For this, the appropriate technical or organizational measures will be used."*

On the other hand, article 27 of LO 7/2021 provides that:

"1. The person responsible for the treatment, taking into consideration the nature, scope, context and purposes of the treatment, as well as the levels of risk for the rights and freedoms of natural persons, will apply the appropriate technical and organizational measures to guarantee that the treatment it is carried out in accordance with this Organic Law and with the provisions of the sectoral legislation and its development rules. Such measures will be reviewed and updated when necessary."

During the processing of this procedure, the 2nd imputed fact of the initiation agreement has been duly proven, taking into account, first of all, that although the new police station came into operation on 07/29/2021, when on 18/06/2021 the complainant photographed the space of the communications room and presented the letter of complaint to the Authority, part of the walls and the entrance door of this room they were of transparent glass; this allowed the reception from the waiting room of the police station to view the images broadcast through the screen panel that had been installed in the communications room. Secondly, that in response to the Authority's request regarding this fact, the City Council responded by alluding in an imprecise manner to the period of "conditioning" of the premises, between the end of August and the beginning of September 2021, but without proving it, and that in any case he was admitting that on a date prior to that period he had not yet placed these vinyls in the transparent glass area.

For all this, the failure to adopt the necessary measures to prevent that during the indicated period the images of people, broadcast through the mentioned screens, were exposed to any person who entered the police station without any reason to justify the dissemination, even if it is possible to adopt them, is considered a constitutive fact of the serious infringement provided for in article 59. f of LO 7/2021, which typifies as such:

"f) The absence of adoption of those technical and organizational measures that are appropriate to effectively apply the principles of data protection, including the appropriate measures from the design and by default, as well as to integrate the necessary guarantees in the treatment. "

4. Article 62.1 of LO 7/2021 determines the following:

"In the event that the responsible subject is one of those listed in article 77.1 of Organic Law 3/2018, of December 5, sanctions will be imposed and the measures established in said article will be adopted."

And article 77.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (from now on, LOPDGDD) provides that, in the case of infringements committed by those responsible or in charge listed in article 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 similar terms 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 (...)".

Given that, during the processing of this procedure, the City Council certified before the Authority the placement -inside and outside the police station- of informative posters about the capture of images through cameras of video surveillance, as well as the placement - in the transparent space of the walls of the communications room - of vinyl strips that made it difficult to see - from outside the room - the images broadcast through the panels installed inside, it is considered unnecessary to require corrective measures to be taken.

resolution

For all this, I resolve:

1. Warn the Parets del Vallès Town Council, as responsible for two violations: a very serious violation provided for in article 58.f in relation to article 16.5; and a serious infringement provided for in article 54.f *in* relation to article 6.1.f), all of them of LO 7/2021.

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 Parets del Vallès 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 the provisions of 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,

Machine Translation