

File identification

Resolution of sanctioning procedure no. PS 86/2022, referring to Calella City Council.

Background

1. On 10/12/2021, by referral from the Spanish Data Protection Agency, the Catalan Data Protection Authority received a letter of complaint against Calella City Council, on the grounds of an alleged non-compliance with the regulations on personal data protection .

In particular, the complainant stated that the City Council had 3 cameras installed in the following locations:

- Carrer Jovara , chamfer with Carrer Sant Isidre.
- Carrer Sant Joan, chamfer with Plaça 1 d'October.
- Carrer Sant Joan, chamfered with Carrer Sant Jaume (N-II).

The complainant indicated that the information posters of the existence of the cameras that the City Council had installed did not identify the person responsible for the treatment or provide their contact details; did not inform about the possibility of exercising the rights provided for in articles 15 to 22 of 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 treatment of personal data and the free circulation thereof (RGPD); and they did not indicate the place where the affected persons can obtain more information about the processing of personal data. The complainant added that the rest of the information required by the RGPD (art. 13) was also not made available to the affected persons.

2. The Authority opened a preliminary information phase (no. IP 503/2021), 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 (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.
3. In this information phase, on 06/21/2022 certain information was requested from the City Council in relation to the events reported.
4. On 07/05/2022, Calella City Council responded to the request mentioned through a written in which stated the following :
 - That the reported devices are cameras for the purpose of traffic control, regulation, surveillance and discipline.
 - That, by means of a resolution issued by the competent body in traffic matters of Calella City Council, the installation and use of the aforementioned cameras was authorized.
 - That the information on the processing of images through the cameras subject to the complaint is made available to the affected people as follows:

- a) By means of informative posters that warn of the existence of the cameras and that are installed before citizens access the image capture area.
- b) Through the data protection section of the Calella City Council website, where information regarding data protection is published (<https://www.calella.cat/altres-continguts/proteccio-de-dades/>).

The reported entity provided Mayor's Decree no. 2018/606, of April 19, authorizing the installation and use of ten traffic control, regulation, surveillance and discipline cameras (including the three reported cameras), as well as the photographs of the posters and the location plan of the three reported cameras.

5. On 11/07/2022, also during this preliminary information phase, the Authority's Inspection Area accessed the website through which Calella City Council had indicated that information was provided additional document on the processing of images using cameras for traffic control purposes (<https://www.calella.cat/altres-continguts/proteccio-de-dades/>), where the following information was provided:

**" Data protection
Responsible for the treatment**

- Responsible for the treatments: **Calella City Council**
- Address: **Plaza de l'Ajuntament, 9**
- Population: **08370 Calella** , Barcelona
- Telephone: **937 663 030**
- Fax: **937 660 576**
- Website: **www.calella.cat**

purpose

The purpose of data processing corresponds to each of the processing activities carried out by the City Council and which will be accessible in the register of processing activities.

Legitimation

The processing of your data is carried out for the fulfillment of legal obligations by the City Council, functions performed in the public interest or in the exercise of public powers granted to it. In cases where the purpose of the treatment requires your consent, this will need to be provided by means of a clear affirmative action. The legal basis for each of the treatment activities carried out by the City Council can be consulted in the register of treatment activities.

Data conservation

The personal data provided will be kept for the time necessary to fulfill the purpose for which it was collected and to determine the possible responsibilities that could arise from it, in addition to the periods established in the regulations for files and documentation.

Data communication

In general, personal data will not be communicated to third parties, except by legal obligation.

You can consult the recipients for each of the treatment activities carried out by the City Council in the register of treatment activities.

Data Protection Officer

The data protection delegate (DPD) is the guarantor of compliance with the data protection regulations at the City Council who is responsible for supervising, independently, the application of compliance with the data protection regulations.

You can contact them via:

- **E-mail:** dpd.ajcalella@diba.cat
- **Contact address:**
Municipal Assistance Service and Strategic Support – DPD ENS
LOCALSDiputació de BarcelonaRecinte Mundet. Ed. Migjorn, block B, 2nd floor Passeig de la Vall d'Hebron, 17108035 Barcelona
- **Telephone:** 934 726 500

Where is the Data Protection Officer (DPO) regulated?

The data protection delegate is regulated in Regulation (EU) 2016/679 of the European Parliament and of the Council (RGPD), of April 27, 2016, relating to the protection of natural persons with regard to the treatment of personal data and the free movement of such data and which repeals Directive 95/46/CE.

What are the duties of the Data Protection Officer (DPO)?

Article 39 of the RGPD includes the duties of the data protection officer, which are as follows:

- Inform and advise on their obligations the person responsible or in charge of the treatment and the employees who deal with the treatment, in accordance with this Regulation and with other data protection provisions of the European Union or of the member states.
- Supervise compliance with the provisions of this Regulation, other data protection provisions of the European Union or of the member states and the policies of the person in charge or of the person in charge of the treatment in the matter of personal data protection, including the assignment of responsibilities, the awareness and training of the personnel involved in the processing operations and the corresponding audits.
- Provide the requested advice on the data protection impact assessment and supervise its application, in accordance with Article 35.
- Cooperate with the control authority.
- Act as the supervisory authority's point of contact for matters relating to processing, including the prior consultation referred to in Article 36, and make inquiries, where appropriate, on any other matter.

Rights of interested persons

The City Council, through different information collection systems in paper or electronic format (instances, forms, etc.), requests personal data from users in order to manage their request in accordance with the current data protection regulations.

The interested person can exercise the following rights:

- **Right to be informed** : to inform in a concise, transparent, intelligible and easily accessible manner, with clear and simple language.

- **Right of access** : to know whether personal data of the interested person is being processed and to access this data and obtain information.
- **Right of rectification** : rectify inaccurate personal data and complete incomplete personal data.
- **Right to deletion (right to be forgotten)** : delete personal data.
- **Right to object** : object to the processing of personal data.
- **Right to limitation of treatment** : mark the personal data stored, in order to limit their future treatment.

Instructions for exercising these rights:

- It is required to fill out a [general request or instance form](#) and hand it in person to any City Hall [citizen service office and the identity of the interested person will need to be proven](#).
- In the rights of rectification, deletion or opposition, in order to avoid unwanted changes that could endanger any right of the person concerned, the affected data must be clearly indicated.

The City Council will deny, with reasons, requests to exercise cancellation or opposition rights in any of the following cases:

- A law obliges to carry out the processing of the data.
- The data are necessary for administrative actions aimed at ensuring compliance with tax obligations.
- The affected person is subject to inspection actions.

Image rights

When exercising one of these rights over photographs or images captured by cameras, please note that:

- You must add the photograph of the person exercising the right and specify the place, the date and the approximate time interval in slots not exceeding two hours.
- In order to clarify possible doubts, it is recommended to indicate a contact phone or email address.
- In some cases it may be materially impossible to satisfy the right of access. For example, in the case of cameras that display images, but do not record them, already deleted images or plans where physical identification is not possible.”

6. On 11/07/2022, the Authority's Inspection Area verified the following:

- That on the website through which the Calella City Council indicated that additional information was provided on the processing of images using cameras for traffic control purposes (<https://www.calella.cat/altres-continguts/proteccio-de-data/>) n or there was no link to the processing activity log (RAT).
- That, through the Google search engine, it was checked whether the words " register of activities " were on the website of the Calella City Council. The search engine only resulted in the page indicated by the City Council (<https://www.calella.cat/altres-continguts/proteccio-de-dades/>).
- That the section of the electronic headquarters where the RAT (transparency portal) should be published was accessed and it was found that the City Council has not published it.

7. On 11/24/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Calella City Council for an alleged violation provided for in article 83.5. *b* , in relation to articles 12 and 13; all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data (RGPD). This initiation agreement was notified to the imputed entity on 11/28/2022.
8. The initiation agreement explained the reasons why no charge was made with respect to other reported facts. Specifically, in relation to the information that should appear on the posters that inform about the cameras for traffic control purposes, given that in the framework of the previous information actions it was found that the signs conformed to the established in article 12.8 of Instruction 1/2009, since they reported that there were traffic cameras that were the subject of the complaint.
9. In the initiation agreement, the accused entity 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.
10. On 13/12/2022, the City Council made objections to the initiation agreement.
11. On 04/19/2023, the person instructing this procedure formulated a resolution proposal, for which he proposed that the director of the Catalan Data Protection Authority admonish Calella City Council, as responsible of an infraction provided for in article 83.5. *b* in relation to articles 12 and 13 of the RGPD.

This resolution proposal was notified on 04/19/2023 and a period of 10 days was granted to formulate allegations.

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

proven facts

Calella City Council installed several video surveillance cameras for traffic control purposes, including the 3 that have been the subject of a complaint. The right to information regarding this treatment was fulfilled through the posters informing about the existence of these cameras and the additional information contained in the following website:
<https://www.calella.cat/altres-continguts/ Data Protection>.

On this website, the following information regarding the processing of images using cameras for traffic control purposes was not specified: the purpose (art. 13.1. *c* RGPD), the legal basis (art. 13.1. *c* RGPD), the eventual recipients of the data (art. 13.1. *e* RGPD) and the retention period (art. 13.2. *a* RGPD). To obtain this information, which would not be provided in a concise manner and is not easily accessible, the aforementioned website was referred to the City Council's RAT, which was not published.

Also, the City Council did not inform about the possibility of presenting a claim before this Authority.

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.

In the statement of objections submitted to the initiation agreement, the City Council of Calella did not question the alleged facts, but pointed out that it had already carried out the necessary actions to specify, in the protection section of data from the municipal website (<https://www.calella.cat/altres-continguts/proteccio-de-dades/>), the information regarding the processing of images using video surveillance cameras for traffic control purposes which lacked specification, and which also included information on the possibility of presenting a claim before this Authority. Regarding this, it has been noted that, within this section, the City Council has incorporated another specific section entitled "Processing of images using video surveillance cameras for traffic control purposes", where it contains all the information established in article 13 of the RGPD in relation to this type of data processing.

Likewise, in the statement of objections, the City Council adds that it has also republished the information corresponding to the City Council's RAT, which disappeared during a migration process from the municipal website, and which is currently you can access it through the link that appears in the data protection section of the municipal website and also through the link to the transparency portal that appears on its electronic headquarters.

Regarding this, the action of the Calella City Council, which has implemented corrective measures to correct the effects of the infringement, should be positively assessed. However, it must be pointed out that the fact of having adopted these measures does not distort the imputed facts, nor does it change their legal classification.

3. In relation to the facts described in the proven facts section, it is necessary to go first to article 22.6 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), which states the following:

" 6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the security forces and bodies and the competent bodies for surveillance and control in penitentiary centers and for the control, regulation, surveillance and traffic discipline is governed by the legislation transposing Directive (EU) 2016/680, when the treatment has the purposes of prevention, investigation, detection or prosecution of criminal offenses or enforcement of criminal sanctions, including protection and prevention against threats against public security.

Outside of these cases, this treatment is governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this Organic Law.”

For its part, the first additional provision of 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 the execution of criminal sanctions (LO 7/2021), regarding the specific regimes, provides the following:

” 1. The treatment of personal data from the images and sounds obtained through the use of cameras and video cameras by the Security Forces and Cuerpos, by the competent bodies for surveillance and control in prisons and for control, regulation, traffic surveillance and discipline, for the purposes provided for in article 1, will be governed by this Organic Law, without prejudice to the requirements established in special legal regimes that regulate other specific areas such as criminal proceedings, traffic regulation or protection own facilities.

2. Outside of these cases, said treatments will be governed by their specific legislation and additionally by Regulation (EU) 2016/679 and by Organic Law 3/2018, of December 5.”

Therefore, the cameras installed for traffic control, regulation, surveillance and discipline are regulated in the eighth additional provision of LO 4/1997, in the following terms:

” The installation and use of video cameras and any other means of capturing and reproducing images for the control, regulation, surveillance and discipline of traffic will be carried out by the authority in charge of traffic regulation for the purposes provided for in the articulated text of the Law on Traffic, Circulation of Motor Vehicles and Road Safety, approved by Royal Legislative Decree 339/1990, of March 2, and other specific regulations in the matter, and subject to the provisions of Organic Laws 5/1992, of October 29, Regulation of the Automated Treatment of Personal Data, and 1/1982, of May 5, Civil Protection of the Right to Honor, Personal and Family Privacy and One's Image, in the framework of the principles of use of the same provided for in this Law.”

In turn, the second additional provision of Decree 134/1999, in relation to said cameras, states that:

”2.1. The police of the Generalitat-mossos d'esquadra and the local police will carry out the installation of video cameras and any other means of capturing and reproducing images and will use them for the control, regulation, surveillance and discipline of the traffic on public roads subject to the regulations included in additional provision 8 of Organic Law 4/1997, of August 4, which regulates the use of video cameras by security forces and bodies in public places, and the present Decree.

2.2. The competent authorities to order the installation and use of the devices referred to in the previous section are:

On public roads where traffic regulation is not attributed to the municipalities, the director of the Catalan Traffic Service in the territory where the police officers exercise this competence.

In public roads under the jurisdiction of the municipalities, the mayor of the respective municipality.

2.3. The resolution ordering the installation and use of these devices will state: the body responsible for the recording operation, the identification of the public roads or sections thereof, the measures to be adopted for in order to guarantee respect for the legal provisions in force, as well as the body in charge of its custody and the resolution of requests for access and cancellation. The validity of the resolution will be indefinite as long as the circumstances that motivated it do not change.

2.4. This resolution must be notified to the Commission for the Control of Video Surveillance Devices, which, if appropriate, may issue a report on the adequacy of the resolution to the general principles of Organic Law 4/1997, of August 4

The custody and conservation of the recordings and the resolution of access and cancellation rights will correspond to the bodies set out in the resolution authorizing the installation and use of the devices. The regime of conservation and custody of the recordings obtained will be governed by the same principles applicable to the recordings obtained using the video cameras regulated by this Decree.

2.5. The exercise of rights of access and cancellation of recordings by those affected will be governed by the provisions of article 15 of this Decree.

2.6. The resolution of authorization will not be necessary when means of capturing and reproducing images of a mobile nature are used in order to ensure compliance with traffic and road safety regulations. However, the Catalan Traffic Service and/or the General Directorate of Citizen Security may issue the necessary instructions and guidelines on their use by the agents of the Generalitat police force in charge of traffic surveillance."

Therefore, neither LO 4/1997 nor Decree 134/1999 determine how the right to information regarding traffic cameras should be implemented, which is why the data protection regulations must be applied additionally.

In this regard, sections 6 and 8 of article 12 of Instruction 1/2009 establish 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 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."

Therefore, in relation to the conduct described in the previous 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 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 data controller will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee fair and transparent data processing:
- a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period;
 - b) the existence of the right to request from the person in charge of 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."

During the processing of this procedure, the fact described in the proven facts section, which is constitutive of the offense provided for in article 83.5, has been duly proven. *b* of the RGPD, which typifies the violation of "the rights of the interested parties pursuant to

articles 12 to 22 ", among which is the right to information provided for in articles 12 and 13 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 of the LOPDGDD provides that, in the case of infringements committed by those in charge or in charge listed in article 77.1 of the 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 . 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 the present case, however, it is not appropriate to propose any corrective measures, given that the City Council already provides interested parties, through the information published on its municipal website, with specific information on each of the different points provided for in article 13 of the RGPD in relation to the processing of images using video surveillance cameras for traffic control purposes.

resolution

Therefore, I resolve:

1. Admonish the City Council of Calella as responsible for an infringement provided for in article 83.5. b in relation to articles 12 and 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 Calella City 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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the accused entity can file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after its notification , in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of the Law 29/1998, of July 13, regulating 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 under 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.