

File identification

Resolution of sanctioning procedure no. PS 17/2023, referring to the Sant Pol de Mar City Council.

Background

1. On 11/11/2021, the Catalan Data Protection Authority, by transfer from the Spanish Data Protection Agency (AEPD), received a letter of complaint against the Sant Pol de Mar City Council, due to an alleged breach of the regulations on the protection of personal data. Specifically, the person making the complaint stated that "in the municipality of San Pol de Mar, cameras have been installed without prior notice in some video surveillance areas", that is to say, without providing the affected people with information about the existence of these cameras. In the letter of complaint, he indicated the location of certain cameras without signaling and added that "por todo el pueblo, puedes encontrar algún cartel, pero without indicating the person responsible for the images or their purpose"; therefore, without properly reporting the processing of images for video surveillance purposes.

The complainant attached the following documentation to his written complaint:

- Photograph of the cameras installed in a street lamp, which are marked with an informative poster placed on the lamp itself. This sign informs that there is a "Surveillance area within a radius of 500", and also indicates the identity of the person responsible for the treatment, "Ajuntament de Sant Pol de Mar". It has a blue background, with a pictogram symbolizing a video surveillance camera centered inside a white rectangle.
 - Photograph of the cameras installed in an urban lamppost, where it is not observed that any informational poster has been installed about its existence.
2. The Authority opened a preliminary information phase (no. IP 464/2021), 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 05/20/2022, among other issues, the reported entity was required to:
 - To report whether the processing of images using the cameras located at various points on the public road was carried out by the Local Police of Sant Pol de Mar.
 - Let me know if these cameras were working.
 - To inform about the purpose of the treatment.
 - That he report on the location of the cameras installed on the public road and the place where the informative posters of their existence had been placed.

- That he provided photographs of all the informative posters of the existence of said cameras .
4. On 06/03/2022, the entity responded to the aforementioned request through a letter dated 06/02/2022, in which it stated the following:
- That "Sant Pol de Mar City Council has several cameras installed on the town's public roads, which are as follows:
 - **Morer Nord** : camera located at the crossroads of Camí del Morer and Carrer Entitats.
 - **Morer Sud** : camera located on Avinguda Maresme with the N-II.
 - **N-II** : camera located at the height of the traffic light at the kilometer point 664,500.
 - **Anselm Clavé** : camera located at the entrance to the N-II in Plaça Anselm Clavé.
 - **Tennis** : camera located on Carrer Herois Fragata Numància at the entrance to Cassarell .
 - **Josep Ma Tarridas** : camera located right at the beginning of the street coming from BV-5128.
 - **Garrofers** : camera located after the underground of Carrer Jacint Verdaguer.
 - **BV-5128** : camera located at the intersection of Carretera Vella, Carrer Riera and Garbí.
 - **B-603** : camera located at the entrance to the Sant Pol 2000 housing estate.
 - **Farell** : camera located on the Farell path entering the N-II.
 - **Consulate of the Sea** : camera located at the height of the Town Hall.
 - **Railway** : camera located once past the level crossing.
 - **Sant Pau** : camera located at the entrance to Carrer Sant Pau. (...)"
 - That "(...) all the indicated cameras are in operation and the processing of these images is carried out by the Local Police of Sant Pol de Mar."
 - That "The purpose of the treatment of the cameras installed on the public road is the following:
 - a) The cameras located on the public road for the purpose of public safety are the following: **Morer North** : (...), **Morer South** : (...); **N-II** : (...); **Anselm Clavé** : (...); **Tennis** : (...); **Josep Ma Tarridas** : (...); **Carobs** : (...); **BV-5128** : (...); **B-603** : (...); **Farell** : (...)"
 - "b) The cameras located on public roads for the purpose of controlling access to restricted traffic areas are the following: **Consulate of the Sea** : (...); **Railway** : (...); **Saint Pau** : (...)"
 - That "All the cameras installed by the Sant Pol de Mar City Council on the public road have an informative poster previously placed at the entrance to the area where the images are captured, which informs of the existence of the cameras."

The reported entity provided the following documentation:

- A map of the location of the video surveillance cameras and the location where the information posters are located.

- Photographs of the informative posters of the existence of the cameras installed by the Sant Pol de Mar City Council.

Based on the documentation provided by the reported entity, it can be seen that currently all the cameras referenced above, both those for public safety and those for access control to restricted traffic areas, are marked with informative posters located before access the image capture area.

Also, it is observed that there are two types of information posters:

- The information posters located at the public safety points, which inform about the video surveillance treatment, "Surveillance area in a radius of 500m", and indicate the identity of the authority responsible for the treatment, "Sant Pol de Mar City Council". They have a blue background and a pictogram symbolizing a camera centered in a white square.
- The information posters located at the access control points to restricted traffic areas, in the central part of which information is given about the treatment of "photographic control."

5. On 03/07/2023, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks through the website of the Sant Pol de Mar Town Council (...).

Specifically, he accessed the Home/City Hall/Data Protection section, which contains general information on data protection and which includes a link to the City Hall's record of processing activities (RAT). It is noted that RAT includes information on the processing of video surveillance data, with the specific purpose of "(...) Recording of images for the safety of people, facilities, traffic control and municipal property" (...).

However, it is noted that the City Council does not inform, neither in the data protection web section nor in the RAT web, about the right to submit a claim to the Authority, (article 13.2. *d* of the 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).

- 6 . On 03/21/2023, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Sant Pol de Mar Council, for an alleged infringement provided for in article 83.5. *b* , in relation to article 13, all of them of the RGPD. This initiation agreement was notified to the imputed entity on 03/23/2023.
7. The initiation agreement explained the reasons why no imputation was made with respect to other facts reported.

Regarding this, among the facts that motivate the initiation of the sanctioning procedure are not included those relating to the installation of video surveillance cameras for the purpose of public safety without signaling or with informative posters that would not include enough information.

The first thing to point out is that, as stated in the initiation agreement, with regard to the video surveillance cameras installed in public security points and managed by the local

police, it is necessary to comply with the provisions of the 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 (LO 7/2021), and the rest of the regulations relating to video surveillance police officer

From the documentation provided by the entity, it was found that the video surveillance cameras installed in the public security points are fixed devices and that they are marked with the corresponding information posters. These posters are placed before entering the area where the images are taken and inform that you are entering a "Guarded area within a radius of 500m". They also indicate the identity of the authority responsible for the treatment, "Sant Pol de Mar City Council", and therefore comply with the requirements of article 16.5 of LO 7/2021 and article 11 of Decree 134/1999, of 18 May, regulating video surveillance by the police of the Generalitat and the local police of Catalonia (Decree 134/1999). Likewise, its design and informative content also conforms to the provisions of the Order of the Minister of the Interior of June 29, 2001, regulating the means by which the existence of installed fixed video cameras is reported by the police of the Generalitat and the local police of Catalonia in public places. Therefore, it is considered that the design of the information posters, as well as the information they contain, is sufficient and appropriate in accordance with the regulations applicable in these cases.

On the other hand, the initiation agreement also states that the information posters do not necessarily have to be installed in the same place where the video camera has been installed, since, according to the Order referenced above, the information sign may have been placed in a radius of up to 500 meters. In this sense, the image provided by the reporting person, in which a camera installed on a street lamppost where no informational poster has been installed, can be seen as an element of evidence sufficient to certify that the City Council does not enforce the right to information.

8. In the initiation agreement, the accused entity was granted a period of 10 working days to formulate allegations and propose the practice of the tests it considered appropriate to defend its interests.
9. On 04/06/2023, the imputed entity made objections to the initiation agreement.
10. On 08/06/2023, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Sant Pol de Mar City Council, as responsible for an infringement provided for in article 83.5. *b* in relation to article 13, both of the RGD.

This resolution proposal was notified on 09/06/2023 and a period of 10 days was granted to formulate allegations. The deadline has passed and no objections have been submitted.

proven facts

The Sant Pol de Mar City Council did not properly inform about the treatment of images captured by the video surveillance cameras installed at the access control points to restricted traffic areas, given that, apart from the information contained on the information posters, in the complementary information that is available on the website of the council, the City

Council did not inform about the right to present a claim before this Authority, in accordance with the provisions of article 13.2. *d* of the RGPD.

On 04/19/2023, this Authority noted that the City Council had updated the additional information on data protection on the municipal website; specifically, it had incorporated the information relating to the right to submit a claim to the 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.

The allegations made by the City Council against the initiation agreement did not tend to distort the facts imputed to the initiation agreement, nor its legal qualification, but, on the one hand, detail the measures adopted to correct the effects of the infringement and, on the other hand, refer in general terms to the documents and justifications provided during the prior information phase.

- Firstly, the City Council highlighted that, following the dictation of the initiation agreement, the entity had updated the data protection section of the City Council website, ((...)), incorporating the information relating to the right to claim before the Authority, in accordance with the provisions of article 13.2. *d* of the RGPD.

Regarding this, in the proposed resolution it was pointed out that, despite the fact that this Authority positively evaluates this action, the adoption of measures to correct the effects of the infringements do not distort the imputed facts, nor do they change the qualification legal. However, they did have effects when proposing that corrective measures be adopted, an issue that is addressed in section 4 of the legal foundations of this resolution.

- Secondly, in the resolution proposal it was indicated that all the manifestations and documentation provided in the prior information phase had already been taken into account when analyzing the facts reported, which gave rise to the initiation of this sanctioning procedure and which are considered proven, in accordance with what is set out in the Proven facts section of this resolution.

3. In relation to the facts described in the proven facts section, first of all it is necessary to bear in mind that article 22.6 of the LOPDGDD establishes the following:

"6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the forces and security bodies and the competent bodies for surveillance and control in penitentiary centers and for control, the traffic regulation, surveillance and 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 the

execution of criminal sanctions , including protection and prevention against threats to public safety. 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, regarding the specific regimes, the first additional provision of LO 7/2021, 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 Bodies, by the competent bodies for surveillance and control in prisons and for the control, regulation, surveillance and traffic discipline, for the purposes set forth 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 the protection of 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."

The installation and use of surveillance cameras for the purpose of control, regulation, surveillance and traffic discipline are regulated in the eighth additional provision of LO 4/1997, of August 4, which regulates the use of video cameras by security forces and bodies in public places. This additional provision establishes:

"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, this rule is deployed in Catalonia by Decree 134/1999, which in the second additional provision includes a specific provision regarding video surveillance for the purpose of traffic control:

- "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. They are competent authorities to order the installation and use of the devices referred to in the previous section: 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."

Well, 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 sense, sections 6 and 8 of article 12 of the APDCAT Instruction 1/2009, of February 10, on the processing of personal data using cameras for video surveillance purposes (henceforth, Instruction 1/2009), establishes 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 established in section 6 of this article. (...)"

In this regard, it should be noted that, following the full applicability of the RGPD and the entry into force of the LOPDGDD, the references contained in Instruction 1/2009 relating to the specific purpose of surveillance and the rest of the information established in the previous Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), must be understood as made in the current data protection regulations.

In this sense, sections 1 and 2 of article 13 of the RGPD establish the following (the bold is from the APDCAT):

"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."

In this case, as indicated in the 4th and 5th antecedents, on the one hand, it has been established that, currently, the cameras installed on public roads for the purpose of controlling access to restricted traffic areas they are marked with informative signs, which inform that you are entering a traffic control area with image capture ("photographic access control"), which would comply with article 12.8 of Instruction 1/ 2009 However, at the time of issuing the agreement to initiate this sanctioning procedure, the City Council did not make available to the interested parties the rest of the complementary information on video surveillance treatment, established in article 13 of the RGPD . In this sense, it

should be noted that the information published in the data protection section of its website and in the City Council's web RAT was not complete, as the information relating to the right to submit a claim to the Authority (art. 13.2 *d* RGPD).

Consequently, it is considered that the City Council did not report on all the points provided for in article 13 of the RGPD.

During the processing of this procedure, the fact described in the proven facts section has been proven, which is considered to constitute the offense provided for in article 83.5. *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 article 13 of the RGPD.

The conduct addressed here has been included as a minor infraction in article 74. *a* of the LOPDGDD, as follows:

"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 infractions committed by those responsible or in charge listed in article 77.1 of the same law, 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 this case, there is no need to propose that corrective measures be adopted, since it has been established that the City Council has updated the data protection section of the municipal website, incorporating the information relating to the right to submit a claim to the Authority, in accordance with the provisions of article 13.2. *d* of the RGPD.

resolution

For all this, I resolve:

1. Warn the Sant Pol de Mar City Council as responsible for an infringement provided for in article 83.5. *b* in relation to article 13, both of the RGPD.

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

2. Notify this resolution to the Sant Pol de Mar City Council.
3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
4. Order that the 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 Law 29/1998, of July 13 , regulator of 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.

The director