

Carrer Rosselló, 214, Esc. A, 1r 1a  
08008 Barcelona

## File identification

Resolution of the rights protection procedure no. PT 35/2021, brought against CSC Vitae, SA.

## Background

1. On 03/26/2021, the Catalan Data Protection Authority received a letter from Mr. (...) (hereafter, the claimant), for which he made a claim for the alleged disregard of the right of limitation consisting in keeping the images captured by the video surveillance system installed at the Cotxeres Primary Care Emergency Center de Barcelona (hereinafter, CUAP Cotxeres) on 03/06/2021 (between 02:30 and 04:30 in the morning), which he had previously exercised before CUAP Cotxeres. This CUAP is managed by the entity CSC Vitae SA.

In the request of 03/23/2021, through which he exercised the right of limitation, the claimant indicated that the events that happened at the CUAP Cotxeres "could constitute a crime" and that the images captured by the cameras "they can become essential evidentiary material", which is why he asked for their preservation "so that they can be used at the appropriate time upon request of the competent judicial authority."

2. On 03/30/2021, the claim was transferred to the data protection representative of the claimed entity so that within 15 days he could formulate the allegations he considered relevant.

3. The data protection representative of CSC Vitae, SA made allegations in a letter dated 04/19/2021, in which he stated, in summary, the following:

- That on 03/24/2021 the request to limit the processing of 03/23/2021 was answered. In that letter, the person making the claim was told that the images were no longer available in any medium and that, therefore, it was not possible to comply with their request.
  - That he was also informed of the criteria followed for the conservation of the images, indicating that this term was configured respecting in any case the maximum term of one month established in Instruction 1/2006, of November 8, of Spanish Data Protection Agency, on the processing of personal data for surveillance purposes through camera or video camera systems and the minimum terms indicated in Guidelines 3/2019 on the processing of personal data through video devices (which approved the European Data Protection Committee -CEPD- on 29/01/2020) to ensure that the images are kept for a sufficient time to achieve the purpose associated with the treatment.
- ÿ That on 03/26/2021 [the same day the claim was made before the Authority] the data protection delegate received by email a new request from the same person, with similar content to the previous request.

Before answering, it was possible to check how the image recording system was configured so that the most recent images are overwritten on the oldest ones contained in the system. In this way it can be guaranteed that the maximum retention periods of these images are not exceeded.

- That it was verified that the conservation period of the images was 14 days and 19 hours. This term is given by the volume of captured images. In this way, in the event that some of the cameras stopped working or capturing data, the retention period would be extended, but it would hardly extend beyond the month without these errors being detected and corrected first of the system.
- That a response was also given to the request of 03/26/2021 (which is provided).
- That in relation to the events that occurred [on 06/03/2021], it must be taken into account that the alleged acts constituting a crime would have been committed by agents of the Barcelona Urban Guard in the exercise of their powers.  
This fact meant that there was no suspicion or appreciation on the part of the person responsible for the treatment that the images captured had value for evidentiary purposes or that they had to be kept in relation to the purpose of the treatment itself.
- That otherwise, by the data controller's own decision, these images would have been kept for a period of one month or even for a longer period.

#### Fundamentals of Law

1. The Catalan Data Protection Authority is the competent control authority to hear about this claim, given that the claimed entity is included within its scope of action in accordance with article 3 .f) of Law 32/2010, of October 1, of the Catalan Data Protection Authority.
2. The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010.
3. Article 18 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 processing of personal data and the free movement of such data (henceforth, the RGPD), regarding the right to limit treatment, provides that:

- "1. The interested party will have the right to obtain from the person in charge of the treatment the limitation of the treatment of the data when any of the following conditions are met:
- a) the interested party contests the accuracy of the personal data, during a period that allows the person in charge to verify the accuracy of the same; b) the treatment is illegal and the interested party opposes the deletion of personal data and requests instead the limitation of its use;

c) the person in charge no longer needs the personal data for the purposes of treatment, but the interested party needs them for the formulation, exercise or defense of claims;

d) the interested party has opposed the treatment pursuant to article 21, paragraph 1, while it is verified whether the legitimate motives of the person in charge prevail over those of the interested party.

2. When the processing of personal data has been limited pursuant to section 1, said data may only be processed, with the exception of its conservation, with the consent of the interested party or for the formulation, exercise or defense of claims, or with a view to the protection of the rights of another physical or legal person or for reasons of important public interest of the Union or a certain Member State.

3. All interested parties who have obtained the limitation of treatment in accordance with section 1 will be informed by the person in charge before the lifting of said limitation."

For its part, article 16 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right of limitation of treatment provides that:

"1. The right to limit processing must be exercised in accordance with the provisions of Article 18 of Regulation (EU) 2016/679.

2. The fact that the processing of personal data is limited must be clearly stated in the information systems of the person in charge."

4. Having exposed the applicable regulatory framework, it is necessary to analyze the merits of the claim. That is to say, if, in accordance with the precepts transcribed in the 3rd legal basis, the limitation of treatment in the terms requested by the person making the claim is appropriate in this case.

As a starting point, it should be borne in mind that article 4.3 of the RGPD defines the limitation of treatment as the marking of personal data kept, with the aim of limiting its treatment in the future. The interested person has the right to limit the processing of the data in certain cases established in article 18.1 of the RGPD. Once the processing has been limited, the affected data can only be processed (beyond their conservation) with the consent of the interested party; to formulate, exercise or defend claims; with the intention of protecting the rights of another natural or legal person; or for reasons of important public interest of the Union or a certain member state. If the treatment has been limited, the person in charge must inform the person concerned before the limitation is lifted.

In the present case, the claimant exercised his right of limitation consisting in preserving the images captured by the CUAP Cotxeres video surveillance system on 03/06/2021, between 02:30 and 04:30 hours.

Carrer Rosselló, 214, Esc. A, 1r 1a  
08008 Barcelona

The person making the claim based this request on the fact that the images could prove alleged criminal acts, which, as specified in their claim, would have been committed by agents of the Barcelona Urban Police.

Therefore, this request must be included in the condition provided for in article 18.1.c) of the RGPD, which allows the exercise of limitation of treatment when the person in charge no longer needs the personal data for the purposes of the treatment, but the interested person needs them to formulate, exercise or defend claims.

Having established the above, the limitation request was made on 03/23/2021, that is to say, once 17 days had already passed since the events that happened on 03/06/2021.

In this regard, the data protection representative of CSC Vitae, SA has indicated that the retention period for the images captured by the video surveillance system is 14 days and 19 hours. Therefore, when the claimant submitted his request on 23/03/2021, the claimed entity no longer kept the images in respect of which his limitation was requested.

In relation to the retention period of the images captured by the CUAP Cotxeres video surveillance system, it should be noted that this corresponds to the data protection regulations. In effect, article 22.3 of the LOPDGDD determines that, in the treatments for video surveillance purposes, the data must be deleted within a maximum period of one month from its capture. However, the retention of the images for a longer period is contemplated when they serve to prove the commission of acts that threaten the integrity of people, property or facilities.

In the specific case, the claimed entity has stated through its data protection delegate that it had no evidence or any suspicion of the possible commission of a criminal act that could have been captured by the video surveillance cameras of the CUAP Cotxeres. That being the case, there was no apparent reason that would justify CSC Vitae, SA keeping those images beyond the storage period, determined based on the volume of the images (14 days and 19 hours at that time, as indicated by the delegate of data protection).

In fact, it was not until 03/23/2021 that the person claiming here made it clear to the claimed entity that, in his judgment, the events that happened on 03/06/2021, which could have been captured by the video surveillance cameras of the CUAP Coaches and in which the claimant and the agents of the Urban Guard were involved, could constitute a crime. In other words, until that date, there was no knowledge of this circumstance that would have justified the conservation of the images beyond the period allowed by article 22.3 of the LOPDGDD, even without the need for the person here claiming exercise your right of limitation.

On the other hand, the claimant requests in his written claim that the images be kept if there is a backup copy of them.

In relation to this, the data protection representative of the claimed entity already stated in his letter in response to the claimant's email of 03/26/2021 that there was "no technical procedure that allows the recovery" of the images. And, in addition, it specified that the new images overwrite the oldest ones.

Therefore, it should be considered that CSC Vitae, SA does not keep any copy of the images affected by the right of limitation, as well as it can be ruled out that these have been blocked. In this regard, article 22.3 of the LOPDGDD establishes that the blocking obligation provided for in article 32 of the LOPDGDD, consisting in the identification and reservation of data that is not applicable to treatments for video surveillance purposes must be deleted or rectified, with the adoption of technical and organizational measures, to prevent their treatment, including display, except for making the data available to judges and courts, the Public Prosecutor's Office or the administrations competent public authorities, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the limitation period thereof.

In the present case, the claimed entity has not invoked any reason for refusal for not satisfying the right of limitation exercised by the claimant. On the contrary, this entity only informed the person claiming that, when he exercised his right of limitation, the images that were requested to be kept had already been deleted, which is why his request could not be granted.

In this sense, article 17.4 of Instruction 1/2009, of February 10, of the Authority, on the processing of personal data through cameras for video surveillance purposes (Instruction 1/2006 of Spanish Data Protection Agency that invokes the claimed entity is not applicable) provides that when the data has been deleted at the time the right is exercised, the response can be limited to exposing this circumstance and informing of the material impossibility of exercising the right.

In short, the present claim for protection of the right of limitation should be rejected, given that the images captured by the video surveillance cameras that were requested to be preserved had already been deleted when the right was exercised.

For all this, I resolve:

1. Dismiss the guardianship claim made by Mr. (...) against CSC Vitae, SA.
2. Notify this resolution to CSC Vitae, SA and the person making the claim.

3. Order the publication of the resolution 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 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the LPAC or to directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, in the period of two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,