

□ File No.: PS/00160/2021

RESOLUTION OF PUNISHMENT PROCEDURE

From the procedure instructed by the Spanish Agency for Data Protection and based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 11/25/2020

before the Spanish Agency for Data Protection.

He states that he received a notification of complaint from the City Council of ***LOCALIDAD.1,

file ending in XX, "driving without using the male seat belt is not

notified by agent on foot", passenger car registration ***REGISTER.1, Honda CR-V, on 09/1/2020 to 10:16 that "it was unknown to him."

He appeared at the Police headquarters and was informed of the corresponding data of the owner

vehicle. "When checking the data I remembered that two years ago I requested in the direction that

In these data, there is a budget for which I had to provide my data

personal, which were communicated when the data of the driver of the

vehicle for not having been identified at the time of the complaint. And with the data

were provided to me, I appeared together with two agents at the indicated address to request

explanations of why he had falsified the data of the driver of the complaint,

implicating me in an act that I had not committed"-

"The corresponding file was opened by the Local Police as I had

presented and denounce for my part the falsity of the data that appears in the complaint".

Attached:

1- Copy of the complaint bulletin, dated 09/1/2020, in which it appears as associated with the data of the vehicle "MACASVER S.L., C/ ***DIRECTORY.1, ***LOCALITY.1" and the rest of the data indicated to the day, model and circumstances already expressed.

Added "the legal obligation to truthfully identify the driver of the vehicle in the time of committing the offence. With the obligation to indicate the permit number or driver's license that allows the identification of the person in the driver's registry.

It is added that "failure to comply with such obligation is qualified in article 77.j) LTSV as an infringement very serious, which will mean the start of a new disciplinary proceeding for not identifying to the responsible driver art 11.1 LTSV, corresponding to such fact a fine economic for an amount of double that foreseen for the original infraction, if it is an infraction mild, and triple, if it is serious or very serious (art 80.2 b) LTSV)"

The part of the bulletin to fill in with the data of the identified driver, appears with the Claimant's handwritten data, dated 10/1/2020, and a signature.

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2-A second document, "notification of complaint", initiation date: 10/16/2020, signed

that same day, with the data of the claimant and the imputed facts: "not using the driver of the vehicle the seat belt, correctly fastened". Unlike

reflected in the previous point, it is indicated that "in the event that at the time of the

offense was not the driver of the vehicle, it is required that within 20 days

natural from the receipt of this notice, truthfully identify the driver of the

vehicle responsible for the infraction -name and surnames DNI full address-

Accompanying a photocopy of your driving license. In the case of rental companies

of vehicles, a copy of the rental contract must be sent. You are warned that if you fail to comply

this obligation without just cause, will be sanctioned as violator of a very

serious, the amount of which will be double that foreseen for the infraction that motivated it..."

SECOND: In view of the facts denounced in the claim and the documents

provided by the claimant on 01/04/2021, the claim is transferred to MACASVER S.L. (the claimed) by electronic means, resulting expired, when the term elapses without accessing your contents.

The request is reiterated this time by postal mail, appearing delivered on 02/1/2021.

A response is received from the respondent, stating:

-Your entity ceased to exercise the activity on 03/31/2018 (attached declaration census of the cancellation in the Census presented online on 04/03/2018 and a copy of form 036, option 140 is marked: "stop carrying out all business activities and or professionals, legal persons and entities without liquidation. Inactive entities", "date Effective termination 03/31/2018."

- "It is not true that this company has the personal data of the claimant or has made improper use of them, having nothing to do with the notification of their data to the City Council of ***LOCALIDAD.1 for a traffic violation carried out on the date 10/1/2020, which apparently should have been done by the person outside this company who committed the infraction with the vehicle when he went to test it because he claimed to be interested in his purchase."

It should be noted that the offense was committed on 09/01/2020 and no document has been provided someone who can prove that he was the driver of the vehicle, appearing in the bulletin of complaint that was sent to the person claimed, who appears as the owner of the vehicle on the date of the facts, and whose owner, corresponds to identify the driver, and the bulletin contains the complete details of the claimant.

THIRD: On 04-08-2021, the claim was admitted for processing.

FOURTH: According to the Mercantile Registry, the company claimed has as its corporate purpose:

"Retail trade of furniture, machines and office equipment. everything related to the piste, scanner and graphic printing., with information technology, both distribution and teaching

and advice. business consulting activities. and related to distribution

telephony CNAE: 4651 wholesale trade of computers, peripheral equipment and pro-

computer programs, featuring B.B.B. as sole administrator

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In a report extracted from AXESOR, as of 05/19/2021, some data of the claimed party are:

Size: Microenterprise

Activity: 4741 - Retail trade of computers, peripheral equipment and programs

computers in specialized establishments

Constitution: 08/08/2003

Last BORME Publication: 06/29/2015 (Change of Registered Office)

Status: active

Average number of employees in 2016, one

The last accounts listed are from 2016.

FIFTH: On 05/24/2021, the Director of the AEPD agreed:

“INITIATE SANCTION PROCEDURE against MACASVER S.L., with CIF B09416306, for

the alleged infringement of article 5.1.d) of the RGPD, as indicated in article 83.5.a) of the

GDPR.

For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the Procedure

Common Administrative of Public Administrations, (hereinafter, LPACAP) the

sanction that could correspond would be a fine of 8,000 euros, without prejudice to what results

of instruction.”

SIXTH: The same day that the electronic notification is made available, 05/24/2021

is accessed by the claimant to the notification.

On 06/11/2021, it makes the following allegations:

-Your company ceased to exercise its activity on 03/31/2018, "it is not true that they have the personal data of the claimant nor has made improper use of the same not having nothing to do with the notification of your data to the City Council for a traffic violation made on 10/1/2020."

-The imputation is based only on statements by the claimant.

SEVENTH: On 06/14/2021, a testing period begins, practicing the following:

following:

-To the claimant, if he filed a police complaint against the claimant for having given his data in the traffic complaint, the reason for your claim before the AEPD, a copy of it and information formation of the procedure in which it is found. In his claim he states that co-recognizes the claimed company because it requested or entrusted the claimant with some products, requires that you report what type of products were treated on what date, how many employees , who was the one who collected the data, if it was in writing, and if you have any documents all of it You also tried a vehicle that was sold to you or was sold in said state-

Establishment on 09-01-2020.

He did not respond to any questions raised.

-To the Local Police of ***LOCATION.1:

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a)

Indicating the traffic complaint bulletin, file number ***FILE.1, fe-

cha denounces 09/1/2020, time 10:16 done "Driving without using the seat belt

security-male- is not notified by agent to go on foot", vehicle data ***MATRI-

CULA.1

, tourism, HONDA CR-V, owner data MACASVER S.L., C/

***ADDRESS.1, ***LOCATION.1, except that it could be MASCAVER

SL actually. The person from A.A.A. is identified as the driver.

information on whether there is evidence of an incident in the true identification notification of the

sanction, when a claim is filed with this Agency by the person identified

as such by, presumably, the entity MASCAVER S.L., owner of the vehicle, since

Also, A.A.A. states that the police opened a file for lack of veracity

in the identification of said sanction. If so, copy of such start and if there are con-

sequences that have fallen on the person responsible today.

b) You are requested to report when you identify yourself as the driver of a vehicle that

motivates an infraction, what kind of representation documents are requested to be

contribution to the company or person that makes said identification to give credibility and

authenticity to the real owner of the vehicle. By way of example, in the identification

sends- copy that originates this claim- only a signature appears, without knowing

who, what person or position of the company carries out the identification, not even their

data and identification. If you know that the regulations require this type of authentication

in the will of the one who identifies said offender, and the reason why in the complaint

received by the identified driver is not known when it is received by the entity that

identifies you as the driver of the vehicle on the day and time of the infraction, since the pro-

transfer the data of another entity, person, the interested party must be informed of said ex-

tremo (article 14 of the RGPD)

On 06/18/2021 they responded, stating:

-“The complaint for the infringement was sent to MACASVER SL on 09/09/2020 with a request

of data to the owner for the identification of the driver, owner of the vehicle on the date of the complaint. "This request was collected on 09/14/2020 by the Manager of the company. dam D.B.B.B." (XX), "who communicated to us on 10/1/2020 the data" that appears completed by hand in the complaint bulletin. "When the data of the claim appears kept on the Registry of Drivers and Violators, B.B.B. none additional documentation."

-On 10/16/2020, the person identified as the driver, the claimant, was sent the complaint notification, which was collected on 10/20/2020, a person who contacted contact with the complaints office stating that he was not the person who was driving the vehicle, and that he had gone to that company some time ago because he had requested a quote, indicating that he wanted to speak with the Manager of said company. prey. They met with the claimant and on the same day, the 20th, accompanied by agents, gave to the company, telling B.B.B. his dissatisfaction with the identification.

The fines management office has canceled all actions against the claim. and the actions carried out were rolled back, starting the procedure again. statement to B.B.B., in which he identified himself as the driver of the vehicle, abandoning the sanction and the withdrawal of the points.

-To the claimed,

a) On the web appears at the address of its registered office, a computer store MICROSSHOP Informatica, MICROSSHOP TIENDAS S.L., indicate what relationship it has with this en-

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entity, what type of business it is and what legal position it has in it, and if it is the owner of the

each store in ***LOCALITY.1, what type of ownership does it hold (company, self-employed, etc.).

b) How many employees did you have when you took the census deregistration at the establishment.

c) If the business owned by MACASVER is deregistered, reason why it is possible

send and collect letters at said registered office of the activity.

d) When the complaint bulletin is sent to the owner of the vehicle so that the

driver-MACASVER S.L.- of that day on 09/1/2020, on 10/1/2020 someone from that entity,

you, or a person on behalf of said entity fills in the details of the claimant. It was in-

via a copy of the driver's identification that is made to the claimant so that he can state what

what do you think about it.

The respondent, to whom the petition is sent by electronic notification, did not respond to it, fi-

appearing in the "expired" notification, due to automatic rejection on 06/27/2021. The self-rejection

automatic occurs "in general, after ten calendar days have elapsed since its

made available for access according to paragraph 2, article 43, of law 39/2015, of 1

of October, of the Common Administrative Procedure of the Public Administrations. And of

particular form, after the term established by the acting Administration in accordance with

the specific legal regulations that apply.

EIGHTH: On 01/10/2022, a resolution proposal is issued for the literal:

"That by the Director of the Spanish Agency for Data Protection, a sanction is made for

MACASVER S.L., with CIF B09416306, for an infringement of article 5.1.d) of the RGPD,

typified in article 83.5 a) of the RGPD, and in 72.1.a) of the LOPDGDD, with a fine of

8,000 euros."

The electronic submission resulted in "expired", automatic rejection date 01/21/2022. A

despite being obliged to interact telematically with the administration, having

Once the initial agreement was received by said means, the proposal was also sent by

postal notification on 01/13/2022. This was returned to origin for "not picked up at the office on

01/31/2022, with management of the first delivery attempt 01/20/2002, "absent, and second the

01/21/2022, absent "a notice was left in the mailbox".

NINTH: Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

1-The municipal police of ***LOCALIDAD.1 imposes a complaint for a traffic violation because the driver of the vehicle was not wearing a seat belt, on 09/01/2020 at 10 a.m. 16, in the vehicle registered ***REGISTER.1 brand and model that appears in the bulletin of complaint, and that appears associated with the ownership of the company MASCAVER S.L., sending do the bulletin so that in your case it identifies the driver. On 10/1/202, it was presented completed by hand and signed the aforementioned bulletin, in which the details of the claimant appear: name and surname, NIE, and address.

2-The claimant received "notification of complaint", of XXX euros and three points deducted, initiation date: 10/16/2020, and the alleged facts: "not using the driver of the vehicle

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the seat belt, correctly fastened. In the claim, the claimant maintains that he was not the driver and that he went to the local police in order to find out why who had been identified. When the Local Police informed him that it had been for the company owner of the MACASVER vehicle, the claimant denying being the driver added that time ago he had provided his data in order to acquire a product of said entity.

3-The company claimed has as its corporate purpose "Retail trade of computers, equipment peripherals and computer programs in specialized establishments", microenterprise. The claimed, MACASVER S.L. contributed before the agreement to start the census declaration of the

low in the Census submitted online on 04/03/2018 and a copy of form 036, showing marked option 140: "stop carrying out all business activities and/or professionals, legal persons and entities without liquidation. Inactive entities", "date effective from the termination 03/31/2018. However, the data of the vehicle causing the infraction, As of the commission date of the same, 09/1/2019, they continued to be owned by MACASVER S.L., as it appeared in the vehicle registry that the local police consulted when imposed the penalty.

4-Requested by the evidence instructor, to the Local Police, explanations about what happened, stated that indeed, they accompanied the claimant to the company of the claimed and before the demonstrations in his presence on the matter, they annulled the sanction to the claimant, taking actions back and initiating the same procedure against the claimed, who self-identified on 11/5/2020 as the driver of the vehicle at the time of the infraction, paying the penalty on 11/25/2020, which coincides with the date on which the claimant submits his claim to the AEPD.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each authority of control and according to the provisions of articles 47 and 48.1 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in hereinafter, LOPDGDD), the Director is competent to initiate and resolve this procedure. of the Spanish Agency for Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

II

Produced as a processing of data by the claimed party is accredited to the en-

send incorrect data for the identification of the driver of the vehicle on the day of the

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fraction, 09/01/2020, it is considered that the claimed party has committed an infraction of article

5.1 d) of the RGPD, which establishes:

“Personal data will be:

c) accurate and, if necessary, updated; all reasonable steps will be taken

so that personal data that is inaccurate with respect to

regarding the purposes for which they are processed ("accuracy");

The vehicle is the link that motivates the identification of the claimant, since it is the one reported

on a day and a specific date in which according to the data collected and contained in the

complaint bulletin, appears MACASVER SL, that although the proxy VJ in his

allegations indicates that he stopped exercising the activity, the vehicle continued under said

ownership, remembering that even this was not an obstacle for him to pay the sanction

imposed by the Local Police, who had previously appeared at the establishment,

locating VJ.

It must be taken into account that in the registry of vehicles accessed by the Forces and

State Security Bodies, among them, the Local Police with competences in traffic

urban in the locality in question, the vehicle appeared with the ownership of the claimed,

entity of which B.B.B is a part.” (XX) as sole administrator, the person who

identifies the claimant. The truth is that on the date of commission of the infraction, the vehicle continued under that ownership and the store was open because the police went to that establishment.

The lack of accuracy of data provided to the complaint bulletin by the claimed, noting the details of the claimant in the complaint bulletin. apparently the I had data from an occasion in which the claimant went to request a budget, but not it is explained that all of them were placed, that they coincided with the driver's registry and offenders, were logical, and despite the fact that the defendant has not offered an explanation plausible defending at all times that he neither had the damage nor has made improper use, although he adds that "he committed the offense when he went to test the vehicle in which he was interested in his copra", a version that contradicts what was stated before the local police when be inquired. In addition, it is the one who affirms a fact that corresponds to prove its veracity, complete the complaint bulletin without a legal title that supports that identification with those data, assumes, as has been proven, that it was not based on the principle of veracity of data, when he had the possibility of really identifying a driver, or if he did not have that possibility, he should not have completed the data with those of a third. Thus, the commission of this infraction is accredited.

III

Article 58. 2.i) of the RGPD indicates:

2. Each control authority will have all the following corrective powers indicated-
two below:

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impose an administrative fine under article 83, in addition to or instead of the measures measures mentioned in this section, according to the circumstances of each particular case.

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lar;

The facts revealed in the claim do not imply an error on the part of the claimant.

because he maintained in the transfer and in the procedure his absence of response ability, pretending to obtain the advantage of being exonerated of the traffic violation, reason which initiates the sanctioning procedure with an administrative fine.

IV

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles for the treatment, including the conditions for consent under articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned Regulation. regulation, with administrative fines of a maximum of €20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total turnover annual global of the previous financial year, opting for the highest amount.

The LOPGDD in its article 72.1.a) indicates: "Infringements considered very serious

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, it is considered

They will be very serious and will prescribe after three years the infractions that suppose a violation substantial modification of the articles mentioned therein and, in particular, the following:

The processing of personal data violating the principles and guarantees established in the Article 5 of Regulation (EU) 2016/679".

v

The determination of the sanction that should be imposed in this case requires observing the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, provide the

Next:

"1. Each control authority will guarantee that the imposition of administrative fines

in accordance with this article for the infringements of this Regulation indicated in

sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

"two. Administrative fines will be imposed, depending on the circumstances of each case

individually, in addition to or as a substitute for the measures referred to in article 58,

section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount

amount in each individual case will be duly taken into account:

a)

the nature, seriousness and duration of the offence, taking into account the nature,

scope or purpose of the treatment operation in question, as well as the number

number of interested parties affected and the level of damages they have suffered;

the intentionality or negligence in the infringement;

b)

any measure taken by the person responsible or in charge of the treatment to alleviate

c)

the damages suffered by the interested parties;

d)

the degree of responsibility of the person in charge or of the person in charge of the treatment, given

account of the technical or organizational measures they have applied under articles

25 and 32;

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and)

any prior infringement committed by the controller or processor;

the degree of cooperation with the supervisory authority in order to remedy the

F)

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular

whether the controller or processor reported the breach and, if so, to what extent;

i) when the measures indicated in article 58, section 2, have been ordered prior to

directly against the person in charge or the person in charge in question in relation to the same

matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or certification mechanisms

cation approved under article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or indirectly.

you, through the infraction.” Within this section, the LOPDGDD contemplates in its

Article 76, entitled “Sanctions and corrective measures”:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU)

2016/679 will be applied taking into account the graduation criteria established in the

section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, also

may be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing
personal.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have led to the commission of
the infringement.

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are disputes between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the remaining corrective measures referred to in article 83.2 of the Regulation (EU)

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2016/679.”

In accordance with the precepts transcribed, in order to set the amount of the sanction of a fine to impose in the present case for the infringement typified in article 83.5.a) of the RGPD, of which the defendant is held responsible, are considered concurrent as aggravating the following factors that reveal greater unlawfulness and/or culpability in the conduct of the reclaimed:

-Article 83.2.b) GDPR. “Intentionality or negligence in the infringement”: Aspect that is evidenced by the responses of the local police in evidence, and that relates the execution of the action with the subject, in the sense of not only imputability of the infraction to responsible, but the fact of being able to aggravate or reduce the sanction according to the degree of culpability. In this specific case, the defendant has denied to this AEPD that he is the author of the identification, but when the agents asked for explanations, the sanction was annulled

claimant and the procedure was started again in which he identified himself as driver of the vehicle at the time of the offence, denoting an open intentionality in giving these data consistent in that he did not have a qualifying title to designate the data of the claimant as driver of the vehicle and author of the infraction when providing your data to the Police to manage the fine.

As a mitigating factor:

-Article 76.2.b) of the LOPDGDD: "The link between the offender's activity and the carrying out personal data processing.", since due to the corporate purpose of the claimed, no habitual, continuous or important treatment is assumed for amount or type of data handled.

As a balance of the circumstances, it is considered that the amount of the penalty is 4,000 euros.

Therefore, in accordance with the applicable legislation and having assessed the graduation criteria of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE MACASVER S.L., with CIF B09416306, for an infraction of the article 5.1.d) of the RGPD, typified in article 83.5 a) of the RGPD, and in 72.1.a) of the LOPDGDD, a fine of 4,000 euros.

SECOND: NOTIFY this resolution to MACASVER S.L.

THIRD: Warn the sanctioned person that he must make the imposed sanction effective once that this resolution is enforceable, in accordance with the provisions of art. 98.1.b) of the LPACAP, within the voluntary payment term established in art. 68 of the Regulation General Collection, approved by Royal Decree 939/2005, of 07/29, in relation to the art. 62 of Law 58/2003, of 12/17, through its entry, indicating the NIF of the sanctioned and the procedure number that appears at the top of this document, in the restricted account nº ES00 0000 0000 0000 0000 0000, opened in the name of the Agency

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Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the

days 1 and 15 of each month, both inclusive, the term to make the voluntary payment will be

until the 20th day of the following month or immediately after, and if it is between the days

16th and last of each month, both inclusive, the payment term will be until the 5th of the second

following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution

It will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the Director of

the Spanish Agency for Data Protection within a period of one month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the fourth additional provision

of Law 29/1998, of 13/07, regulating the Contentious-administrative Jurisdiction, in the

period of two months from the day following the notification of this act, as

provided for in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned LPCAPAP. You will also need to transfer

to the Agency the documentation that accredits the effective filing of the appeal

contentious-administrative. If the Agency was not aware of the filing of the

contentious-administrative appeal within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

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Director of the Spanish Data Protection Agency

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