

Procedure No.: PS/00229/2020

□ RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 11/26/2019 filed
claim before the Spanish Data Protection Agency. The claim is
directs against GENERAL INTERVENTION OF THE STATE ADMINISTRATION OF THE
MINISTRY OF FINANCE AND SPOKESMAN (IGAE), with NIF S2826015F (in
later, the claimed one). The reasons on which the claim is based are, in summary: that
By entering your data in the internet search engine, you access the concession resolution
for housing assistance that he requested in year XXX from the Canary Islands Housing Institute. The
The claimant requested on 02/19/19 the suppression of the data to the aforementioned body
answering that the data is published on the Database website
National Subsidies (BDNS) dependent on the Ministry of Finance and given that
is a website that does not depend on the Government of the Canary Islands, we have proceeded to communicate the
incident to BDNS, not having attended the right to delete data
personal.

SECOND: Upon receipt of the claim, the Subdirector General for Inspection
tion of Data proceeded to carry out the following actions:

On 01/31/2020, the brief filed was transferred to the defendant for analysis and co-
communication to the complainant of the decision adopted in this regard. Likewise, he is re-
I wanted him to send the Agency certain information within a month:
- Copy of the communications, of the adopted decision that has been sent to the
claimant regarding the transfer of this claim, and proof that

the claimant has received communication of that decision.

- Report on the causes that have motivated the incidence that has originated the claim.

- Report on the measures adopted to prevent incidents from occurring.

similar quotes.

- Any other that you consider relevant.

The respondent in response offered on 03/02/2020, indicated that in accordance with Article 9.3 of Royal Decree 130/2019, of March 8, which regulates the Base of National Subsidies Data (BDNS) and the advertising of subsidies and de-more public aid, the right of opposition, rectification and cancellation of the data registered in the BDNS is exercised before the body responsible for supplying other information. For this reason, on February 14, his letter was forwarded to the Institutional Administrator of the National Database of Grants in the Co-autonomous community of the Canary Islands, to urge the Canarian Housing Institute the adoption of the appropriate measures to respond to the request of the AEPD.

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For its part, the Comptroller General of the Government of Gran Canaria has urged the Institution Canary Islands Housing Tuto to access the user's request as quickly as possible.

ity possible; A copy of both documents was attached, waiting for the

Canarian Housing Institute proceeded to carry out the requested operation, when

in which it would also be communicated to the AEPD.

THIRD: On 07/24/2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the re-claim filed by the claimant against the respondent.

FOURTH: On 10/15/2020, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infractions of articles 5.1.e) and 17 of the RGPD, sanctioned in accordance with the provisions in article 83.5.a) and 83.5.b) of the aforementioned RGPD.

FIFTH: Once the initiation agreement was notified, the respondent submitted a written statement of allegations stating: that based on the information provided by the BDNS, the SNPSAP provides information in two sections: Announcements and Concessions and that in the In this sanctioning file, the publication of certain information is questioned. tion of a personal nature in the Calls section.

That in relation to the advertising of the Concessions, there is no information referred to the case analyzed because the information on the concession to natural persons is remains published only during the year of concession and the following year and that in what that refers to the publication of concessions, the obligations have been complied with. tions established in this matter for the protection of personal data and thus, to the day As of today, there is no published information regarding this beneficiary in the SNPSAP, although it is still maintained in the BDNS (with restricted access) because it has not yet transferred after the statute of limitations available to the Administration to verify or control this subsidy and, where appropriate, demand the corresponding reimbursement.

That in no case was the information that could be understood as recorded or stored. directed this sanctioning procedure by being completely out of place and al-cancel this system.

That with regard to the Calls section, the IGAE must guarantee the integrity of the content of the agreement of the call such, said content perma-

It needs to be owned by the convening Administration, which is solely responsible for it.

what the system of annulment or modification of the calls, its competence is

assigned to the convening body. Therefore, those responsible for the correct supply of

the information to the BDNS are the holders designated in each Autonomous Community;

in turn, its Institutional Administrator will ensure that they adopt the measures

aimed at guaranteeing the correct provision of information.

In short, the owners of the information registered in the BDNS are their own

holders, who are responsible for its correct registration.

That this system of responsibilities has been assumed by the Government of the Canary Islands

on previous occasions.

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SIXTH: On 11/16/2020, a period of practice tests began, in accordance with

do the following:

Consider reproduced for evidentiary purposes the claim filed by the

plaintiff and its documentation, the documents obtained and generated by the

Inspection Services that are part of file E/00956/2020.

Consider reproduced for evidentiary purposes, the allegations to the initial agreement

PS/00229/2020 presented by the respondent, and the documentation that they

accompanies.

SEVENTH: As no violation of the regulations on protection has been observed,

tion of data and in accordance with the provisions of article 89 of Law 39/2015, of

October 1, of the Common Administrative Procedure of the Public Administrations

cas, which in section 1.a) proceeds to issue a Resolution.

EIGHTH: Of the actions carried out in this proceeding, they have been accredited the following:

PROVEN FACTS

FIRST: On 11/26/2019 there is an entry in the AEPD written by the claimant against the claimed entity, stating that by entering your personal data in the Internet search engine can access the data of the aid granting resolution.

gives to the home that you applied for in year XXX to the Canary Islands Housing Institute. With Subsequently, the claimant requested the deletion of the data from the aforementioned body.

telling you that the aforementioned data was published on the website of the Database

National Data on Subsidies (BDNS) dependent on the Ministry of Finance and

Since it is a website that does not depend on the Government of the Canary Islands, it had proceeded to communicate the incidence to the BDNS, not having taken care of the right to suppress your personal information.

SECOND: A copy of the Resolution Recognizing Subsidy for

the Acquisition of New Construction Protected Housing / Acquisition Program

Housing for young people charged to the Budgets of the Public Administration

the Autonomous Community of the Canary Islands to the claimant and a copy of the screen print of

Google of the aforementioned Resolution where the personal data of the re-claimant, grant, etc.

THIRD: On 02/18/19 the claimant sent an email subject to private data hosted on the web:

To: ipermedm@gobiernodecanarias.org

CC: icv@gobiernodecanarias.org

Hello:

Browsing the web I found this document just by typing my name:

(RESOLUTION RECOGNIZING SUBSIDIES FOR THE ACQUISITION OF VI-

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PROTECTED HOUSING)://***URL.1, I do not know if I am addressing the department

correct, but I request as far as possible that to include my address and other data

cough, they can withdraw said information, I appreciate the help offered.

On 09/19/2019, the previous e-mail was answered:

To: ***EMAIL.1

(...)

Good day, your claim must be addressed to the Canary Islands Housing Institute, I provide

link with models and presentation options.

(...)

FOURTH: On 02/19/19 the claimant received a response from the email address [icv@-](mailto:icv@governmentdecanarias.org)

[governmentdecanarias.org](mailto:icv@governmentdecanarias.org), noting:

Hello:

Through the link you refer, you can access the website of the National Database

Subsidies Department, dependent on the Ministry of Finance and who have communicated it

do to the Ministry of Finance.

We have been able to verify that, although through the link that you have not provided,

nado, there is access to the Resolution in pdf format, making the query directly

with NIF/Name on the aforementioned website, no results are obtained.

In any case, since it is not a website of the Government of the Canary Islands,

has proceeded to communicate the incident to the interlocutors of the Ministry of Finance

with the National Database of Subsidies, in order to correct the problem

ma.”

FIFTH: Document addressed by the claimed party to the BDNS Institutional Administrator

in the CCAAA Canarias dated 02/14/2020, in which it is stated:

(...)

The award resolution document shows personal data of the claimant

(name and surnames, D.N.I., weighted family income, location of the dwelling)

home purchase price, home purchase loan amount,

sale, etc).

In accordance with article 9.3 of Royal Decree 130/2019, of March 8, by the

which regulates the National Database of Subsidies (BDNS) and the advertising of

subsidies and other public aid, the right of opposition, rectification and

cancellation of the personal data registered in the BDNS is exercised before the body

responsible for providing the information.

For this reason, we are writing to you so that, in your capacity as Institution Administrator,

tion, urge the Canarian Housing Institute to adopt the appropriate measures

tes to respond to the request of the AEPD.

(...)”

SIXTH: There is a response to the previous letter from the BDNS Institutional Administrator

in the CCAAA Canarias dated 02/19/2020, in which it is stated:

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From: BBB

Sent on: Wednesday, February 19, 2020 11:03

To: BDSM

Subject: Re: 2020-02-17 Protection of personal data

“Good morning, written attachment addressed by the Comptroller General of the CAC to the Institute Canaria de la Vivienda urging you to comply with your request. In the same mo you are instructed to inform us when they correct the situation to transfer them. With respect to the rest of the subsidies and aids indicated in the files, we are separated calling them by manager to address them and act accordingly”.

SEVENTH: Document addressed by the respondent to the AEPD dated 02/28/2020, in which is indicated:

“(…)

In accordance with article 9.3 of Royal Decree 130/2019, of March 8, by the which regulates the National Database of Subsidies (BDNS) and the advertising of subsidies and other public aid, the right of opposition, rectification and cancellation of the personal data registered in the BDNS is exercised before the body responsible for providing the information.

For this reason, on February 14, your letter has been transferred to the Ins-Institutional of the National Database of Subsidies in the Autonomous Community of the Canary Islands, so that the Canarian Housing Institute urges the adoption of the measures measures to respond to the request of the AEPD.

For its part, the Comptroller General of the Government of Gran Canaria has urged the Insti-Canary Islands Housing Tuto to access the user's request as quickly as possible. give possible.

We attach a copy of both letters. We are waiting for the Canadian Institute The Housing Authority proceeds to carry out the requested operation, at which time it is communicated We will also notify the AEPD”.

EIGHTH: There is a document addressed to the Canarian Housing Institute dated

02/19/2020 in which it is indicated:

“By part of this General Intervention it is reported that an official letter has been received from the

National Database of Subsidies on claims before the National Agency

of Data Protection that has been formulated by a natural person beneficiary of

a subsidy granted by the Canarian Housing Institute.

Attached is the official letter sent by the BDNS, as well as the one corresponding to the aforementioned

National Data Protection Agency.

For this reason, the Canarian Housing Institute is urged to, as soon as possible,

sible to access the user request.

To do this, you must enter the BDNS and remove the pdf document containing the data

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object of claim.

If they do not have authorization, they must request it from the Planning Service.

tion and Directorate of Accounting of the General Intervention.

Finally, once said operation has been carried out, you must notify us to give the co-

corresponding transfer to the BDNS”.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to re-

solve this procedure.

Yo

Article 89, Proposal for a resolution in sanctioning procedures,
of Law 39/2015, of October 1, of the Common Administrative Procedure of the
Public Administrations, establishes that:

II

"1. The investigating body will resolve the completion of the procedure, with file
of the actions, without it being necessary to formulate the resolution proposal.

tion, when in the instruction procedure it is made clear that there is al-

any of the following circumstances:

- a) The non-existence of the facts that could constitute the infraction.
- b) When the facts are not proven.
- c) When the proven facts do not constitute, in a manifest way, an infringement
administrative.
- d) When it does not exist or it has not been possible to identify the person or persons
liable or appear exempt from liability.
- e) When it is concluded, at any time, that the infraction has prescribed.

2. In the case of procedures of a sanctioning nature, once the
instruction of the procedure, the investigating body will formulate a proposal for a resolution
tion that must be notified to the interested parties. The proposed resolution must
indicate the start of the procedure and the term to formulate allegations
and present the documents and information deemed pertinent.

3. In the proposal for a resolution, the facts that
are considered proven and their exact legal qualification, the infraction will be determined
that, if applicable, they constitute the person or persons responsible and the sanction
tion that is proposed, the assessment of the tests carried out, especially those
that constitute the basic foundations of the decision, as well as the provisional measures

which, if any, had been adopted. When the instruction completes the

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non-existence of infraction or responsibility and no use is made of the power provided

in the first section, the proposal will declare this circumstance”.

In application of the previous precept, it is appropriate to resolve the initiated procedure.

Article 5 of the RGPD, Principles related to the treatment, establishes the following-

III

tea:

"1. The personal data will be:

(...)

e) maintained in a way that allows the identification of the interested parties during

no longer than is necessary for the purposes of processing the personal data.

them; personal data may be kept for longer periods provided

that are treated exclusively for archiving purposes in the public interest, research purposes

scientific or historical information or statistical purposes, in accordance with article 89,

section 1, without prejudice to the application of the technical and organizational measures

measures imposed by this Regulation in order to protect the rights and freedoms

of the interested party ("limitation of the term of conservation");

f) treated in such a way as to guarantee adequate security of the damages

personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational ("integrity and confidentiality").

(...)"

And article 17, Right of suppression ("the right to be forgotten"), of the RGPD in

its section 1 establishes that:

"1. The interested party shall have the right to obtain without undue delay from the responsible

treatment the deletion of personal data that concerns you, which is-

will be obliged to delete the personal data without undue delay when there is an

any of the following circumstances:

a) the personal data is no longer necessary in relation to the purposes for

those that were collected or otherwise treated;

b) the interested party withdraws the consent on which the processing of data is based.

accordance with article 6, paragraph 1, letter a), or article 9, paragraph 2, letter

a), and it is not based on another legal basis;

c) the interested party opposes the treatment in accordance with article 21, paragraph 1,

and other legitimate reasons for the treatment do not prevail, or the interested party

object to processing pursuant to Article 21(2);

d) the personal data has been illicitly processed;

e) the personal data must be deleted for the fulfillment of an obligation.

legal condition established in the Law of the Union or of the Member States

that applies to the data controller;

f) the personal data has been obtained in relation to the offer of services

of the information society referred to in article 8, paragraph 1.

(...)"

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The publicity of the subsidies must be put in relation to the right of the citizens to the protection of their personal data, as regulated in the RGPD and in the LOPDGDD.

IV

In the present case, as stated in the antecedents and first proven fact, the re-

The claim filed is due to the fact that the claimant, when entering their personal data staff in the internet browser can access the data of the resolution of con-

transfer of housing aid that had been requested, in year XXX, from the Canary Islands Institute of Housing. Subsequently, the claimant requested the suppression of his data to the ci-

body, obtaining as a response that the data was published

on the website of the National Database of Subsidies (BDNS), dependent on the

Ministry of Finance and since it is a website that does not depend on the Government of Ca-

arias had proceeded to communicate the incident to the BDNS, not having attended

the right to delete your personal data.

Likewise, the file contains the document addressed by the respondent to the Administrator

Institutional BDNS in the CCAAA Canarias, on 02/14/2020, informing that it had been re-

received, from the AEPD, a claim made by a natural person benefiting

ciary of a subsidy granted by the Canarian Housing Institute and that in the

The indicated link showed the document published in the corresponding SNPSAP

to the resolution issued by the Canarian Housing Institute granting the

claimant a subsidy for the purchase of a subsidized home.

The document was housed in the SNPSAP space reserved for calls

and, specifically, to the call registered in the BDNS by the Canarian Institute of the

Housing, dated 12/01/2017, and showed the personal data of the claimant.

The one claimed both in this letter and in the one addressed to the AEPD, on 02/28/2020, indi-

It was understood that "In accordance with article 9.3 of Royal Decree 130/2019, of March 8, 2020, which regulates the National Database of Subsidies (BDNS) and the publication and publicity of subsidies and other public aid, the right to oppose, correction and cancellation of the personal data registered in the BDNS is exercised before the body responsible for supplying the information. And for this reason, he went to the Institutional Administrator to urge the Canarian Housing Institute the adoption of the appropriate measures to respond to the request of the AEPD.

There is also the Administrator's response dated 02/19/2020, which attached the letter addressed by the Comptroller General of the CAC urging compliance with the request formulated and it was indicated to the Canary Islands Housing Institute that they had to report once the situation was corrected.

Royal Decree 130/2019, of March 8, which regulates the National Database of Subsidies and publicity of subsidies and other public aid, regulates in its Chapter V, the regime of responsibilities, indicating in its article 9, Administration and custody of the BDNS, which:

"1. The BDNS is a system made up of the information provided by different Administrations and bodies; each of them retains ownership and responsibility

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reliability of the content supplied to the BDNS. Corresponds to the General Intervention of the State Administration:

a) Manage, safeguard and guarantee the conservation of the information contained in the database.

b) Determine the instruments for communication of information to the BDNS and for advertising and transfer of its content.

c) Authorize access to the National Database of Subsidies in the terms provided in the applicable regulations.

d) Dictate the appropriate instructions, in the terms set forth in article 20.10 of Law 38/2003, of November 17.

2. The control and security of the data contained in the BDNS will be governed by what provided in the personal data protection regulations in force at any given time. as well as what is stated in Royal Decree 3/2010, of January 8, which regulates the National Security Scheme in the field of Electronic Administration ca and in the Resolution of December 21, 2015, of the Secretary of State for Pre-Assumptions and Expenses, by which the security policy of the information systems is regulated. information from the Secretary of State for Budgets and Expenditures and Intervention General of the State Administration.

3. The General Intervention of the State Administration is the body before the that the right of access will be exercised. The rights of opposition, rectification and cancellation Concealment will be exercised before the body responsible for supplying the information (the underlined corresponds to the AEPD).

The SNPSAP provides information on advertising in two sections: Announcements and Concessions.

In the link provided by the claimant through which he had access to the resolution solution granted by the Canarian Housing Institute on the access route, slug, figure ra the summons subsection:

***URL.1.

The respondent has provided a screen print of the SNPSAP indicating that there is no information referring to the case analyzed and that this is so because in light of article 7.8

of Royal Decree 130/2019, the information on the concession to natural persons is kept has published only during the year of concession and the following year and that in what is refers to the publication of concessions, the established obligations have been complied with. established in this matter for the protection of personal data and thus, to date, we do not Information published regarding this beneficiary appears in the SNPSAP.

The former R.D. in its Chapter IV regulates the Publicity and transfer of the information of the BDNS and in its article 7, Advertising of subsidies and public aid, sections 5 and 8 establishes that:

(...)

8. The information on concessions will remain published during the four calendar years following the year in which the subsidy was granted, being withdrawn automatically by the BDNS itself after said period. In the case of

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tions in favor of natural persons, publicity is reduced to the year of concession and the next year. However, these deadlines will be replaced by those established in the regulation.

European policy, in case it indicates longer terms.

(...)”

However, according to the respondent, the information kept in the BDNS regarding to this subsidy is strictly necessary for the purposes established in the Law General Grants; In no case was the information recorded or kept.

which it is possible to understand directed this sanctioning procedure to be completely out of place and out of reach of this system.

Regarding the Calls section, the IGAE guarantees the integrity of the content of the agreement of the call as published in the SNPSAP and, in addition, said agreement held remains the property of the convening Administration, its only responsibility is, so the system of annulment or modification of the calls, is attributed to the convening body that is currently regulated in the Resolution of 06/15/2020, of the General Intervention of the State Administration, by which it establishes the process of registration and publication of calls in the National System of Publicity of Subsidies and Public Aid that repeals the previous Resolution of 10/12/2015.

Thus, those responsible for the correct provision of information to the BDNS are the holders appointed in each Autonomous Community; in turn, its Institutional Administrator will ensure that they adopt the measures aimed at guaranteeing the correct provision of the information.

In short, that the owners of the information registered in the BDNS are substitutes and are responsible for its correct registration; therefore, the respondent does not have powers to alter or remove published documentation; it must also guarantee that the publication of its content is carried out in the same terms in which it is moved from the convening body.

The defendant also certifies, due to the investigative steps carried out by the AEPD that has given rise to the procedure, contact the Community of Catalonia by email to urge the correction of administrative deficiencies.

discharged in which they reiterated the need to solve the problem raised, not only for the case that had caused the sanctioning file, but for all those in which the same problem coincides.

Furthermore, the respondent states that the publication of information about personal character in the "Convocations Section" of the SNPSAP that has as a cau-

sa this file, responds to a systemic problem of providing information of the Government of the Canary Islands, which to date has not been completely corrected by the CCAA, although it clarifies that since 2019 the individual resolution of granting of the subsidy as a document of the call, giving a solution to the beneficiary data protection; although, it is estimated that the number of calls companies registered in the years 2016 and 2017 whose documents could contain data that are being published in the SNPSAP is close to 3,200 records, including subsidies to purchasers of subsidized housing, to the promotion of self-employment, social emergency aid and urgent aid of a humanitarian nature.

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river.

Likewise, the IGAE states that it has continuously shown a proactive attitude goes and has carried out as many actions as fit within the scope of its powers so that the improperly published information was cancelled, it has carried out actions specific actions in addition to the transfer and dissemination of documentation to the different res involved; Periodically, the Institutional Administrator is informed of the need activate in the BDNS the mark of non-publishable concessions to prevent the in-training of the beneficiary is published in the SNPSAP in those calls registered BDNS that are aimed at natural persons in a situation of special protection or because of their health status, sexual orientation, racial or ethnic origin, etc. Given that the information object of this claim continues to be accessible when putting the name and surname of the claimant in search engines, the obligation to pro-

immediately to the requested deletion.

Therefore, in the present case, the respondent does not observe a violation of the regulations on the protection of personal data.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE the MINISTRY OF FINANCE AND SPOKESMAN (IGAE), with NIF S2826001F, for the alleged violation of Article 5.1.e) of the RGPD, typified in Article 83.5.a) of the RGPD.

SECOND: FILE the MINISTRY OF FINANCE AND SPOKESMAN (IGAE), with NIF S2826001F, for the alleged infringement of article 17 of the RGPD, typified in the article 83.5.b) of the RGPD.

THIRD: NOTIFY this resolution to the MINISTRY OF FINANCE AND FOR-TAVOCIA (IGAE).

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

Resolution 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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

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

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

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion 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 LPA-

CAP, the firm resolution may be provisionally suspended in administrative proceedings if the

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The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the city

tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation

certifying the effective filing of the contentious-administrative appeal. Yes

the Agency was not aware of the filing of the contentious-administrative appeal

nistrative within two months from the day following the notification of the pre-

This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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