

Procedure No.: PS/00146/2019

938-0419

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: On 12/26/18, this Agency was notified by the City Council of

Ogíjares (Granada) of the Complaint filed by the local resident Doña

A.A.A. (\*hereinafter, the claimant), motivated by the alleged data processing  
carried out through cameras of a video surveillance system whose alleged owner  
identifies as B.B.B. (\*hereinafter the claimed) installed at \*\*\*ADDRESS.1.

The grounds on which the claim is based are "placement of a series of  
video-surveillance cameras in my home, both in the interior areas of the farm,  
as in the exterior ones, focusing two of them towards the public road (...)"  
"I attach the Complaint filed against my ex-partner B.B.B. for harassment of  
place this a series of video-surveillance cameras in my home, both in the  
interior areas of the property as well as exterior areas, focusing two of them on the road  
public, and thus controlling access to my home, as well as the passage of cars and  
people on the sidewalk (...).

"I want to record this City Council so that it informs the Police

Local to open an investigation into these cameras, since in addition to

Assuming harassment of myself is also harassment of my neighbors (...).

As you know, \*\*\*ADDRESS.1 belongs to Sociedad Landete S.L, whose

Sole administrator is Mr. B.B.B., and of which I am a partner. I inform you that this

Company is currently in litigation because I have requested its dissolution and said

administrator has been indicted for alleged criminal administration offenses

unfair that are currently in the resolution phase in the Hearing

Province of Granada.

“The defendant also has a sentence of two years in prison for a crime

of continued gender-based violence, according to Final Judgment No. 165/2014 (...)” (folio No. 1).

The complaint is accompanied (exhibit Doc. No. 1) by the Official Letter of the Local Police

(City Council Ogíjares-Granada) which confirms the following:

“That these Agents can verify how in the area of C/\*\*\*CALLE.1 at the

height of the \*\*\*ADDRESS.1, it can be seen as in the main entrance door

There is a video-surveillance camera, which focuses through the objective towards

the C/\*\*\*CALLE.1 where neighbors of the area and passers-by travel regularly”.

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SECOND: In view of the reported facts, in accordance with the evidence

that is available at this procedural moment, the Data Inspection of this

Spanish Agency for Data Protection considers that the system object of

complaint is being used for the purpose of excessive control of the

entrances/exits of the defendant's home, so that she feels disturbed

in their right to privacy by feeling permanently observed in their

daily chores, without there being legitimacy for it, for which reason the

opening of this sanctioning procedure.

The documentary evidence provided (photographs 1 and 2) allows verifying the

presence of the reported device(s), with a prima facie orientation towards areas

that the complainant qualifies as a private area.

To the above, add that the same "facts" according to the manifestation of the complainant have been transferred to the Investigating Court No. 5 (Granada Proceedings Previous No. 2125/2018), although it does not provide documentary evidence to that effect.

THIRD: On June 11, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5 of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: On 06/26/19, this Agency received a reply from the respondent, stating the following in relation to the facts subject to transfer:

"The facts for which this procedure is opened have already been judged and Filed by the Court of Instruction No. 5, a fact that the complainant knows and hides to produce CONFUSION.

Likewise, there is also a Report of the Civil Guard that in its day contributed to the referred Court where it was clear that the cameras are in a private place and focusing on private areas (Document No. 1).

Recurse once more, with the intention I suppose of creating an environment unfavorable towards me, to a sentence of "mistreatment" for which I did not comply prison and that they were the object of a false complaint that the Judge did not understand and that I I complied but that is in the hands of my Lawyer (...).

And most importantly, the cameras are on, in a private area and focusing on such a private area, as proved by the Report of the Civil Guard and the Archive of the Court.

Private area of which the complainant is NOT the owner, as stated in the

sanctioning procedure and that by final judgment of the supreme dated 01/31/18  
of resource 3116/2015 and already communicate their final eviction by 06/28/19 by  
the Court of Instruction No. 14, SHOULD have already Evicted". (Doc no. 3).

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FIFTH: On 07/19/19 collaboration is requested from the Security Forces and Corps  
State Security, so that those displaced to the scene of the events verify the  
existence of the set of installed cameras, as well as the legality of the system in  
question.

SIXTH: On 08/14/2019, an Official Letter from the General Directorate is received in this Agency  
of the Civil Guard (Granada) pointing out that there is a video-surveillance system in  
\*\*\*ADDRESS.1, located at \*\*\*CALLE.1-Ojigares (Granada).

"The existence of 3 security cameras on the perimeter and 2 on the  
inner courtyard of the building where the pool and gardens are located (...) currently the  
property of is legally separated between the complainant and her former partner without  
that there is a physical division of the same, photographs of the three chambers of  
outer perimeter, not being possible to photograph those inside as there is no access to  
this area (...)

There are several posters on the wall of the building that says "Protected with  
electronic alarm and other security measures" along with two numbers of  
telephones... no company name can be seen, the logo corresponding to "Rodych  
Security", made a call to the company Rodych which states that they do not have  
contract with that address since 2013 and in it there are NO cameras

video surveillance.

“The orientation of the perimeter cameras is directed to the entrances and wall exterior of the farmhouse, not being observed that it affects the entrance of the domicile of the complainant, the orientation of the interior cameras is towards the garden area and common pool being able to collect part of the windows where the complainant resides”.

“It has not been possible to observe the recordings or operation of the cameras by not having access to the address of B.B.B., which could not be located and is not in the place, having a restraining order in force.

SEVENTH: On 08/28/19, a "resolution proposal" was issued in which

Based on the facts stated, the administrative infraction was considered accredited.

of art. 5.1 c) RGPD, proposing a sanction encrypted in the amount of €10,000 (Ten

One Thousand Euros), by having the accused have a system of video-surveillance cameras,

that affected the privacy of the complainant "treating her data" without

just cause.

EIGHTH: The database of this body was consulted (09/23/19), it contains

certificate issued by the Official Postal Service, where the

Next:

-First notification attempt, 09/02/2019 at 12:56, by employee 449728

has been 03 Absent.

-Second notification attempt, on 09/03/2019 at 16:45, by the employee

203536 has returned 03 Absent. Notice left in mailbox.

PROVEN FACTS

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First. On 12/26/18, this Agency received a Complaint from the party

complainant, by means of which he transfers the following as the main fact:

“placement of a series of video-surveillance cameras in my home, both

in the interior areas of the farm, as well as in the exterior areas, focusing on two of them

towards the public highway (...)”

“...because in addition to being a Harassment towards me, it is also for

my neighbors and for anyone who wants to use public roads” (folio nº 1).

Second. It is identified as the main person responsible, the ex-partner of the

whistleblower Don B.B.B., who admits to having installed the security camera system

video surveillance.

Third. The system of video-surveillance cameras, according to the Report of the

Civil Guard (08/02/19) issued at the request of the instructor of the procedure, is

consisting of a total of five video-surveillance cameras.

“The existence of three security cameras on the perimeter and in the

inner courtyard of the building where a pool and gardens are located, currently the

property is legally separated between the complainant and her former partner, without

that there is a physical division of the same, photographs of the three chambers of

outer perimeter,(...)”

“The orientation of the perimeter cameras is directed towards the entrances and wall

exterior of the farmhouse, ...the orientation of the interior chambers is towards the

gardens and common pool being able to collect part of the windows where the

complainant” (\*bold belongs to this body).

Examined the photographs provided (doc. 1 photograph nº1), the same

(chamber) is inside the complex in such a way that due to the orientation provided

it is inferred that it allows to control the window and the entrance door of the house, in

Where does the complainant reside?

It consists of identifying a second interior chamber at the top of a post, from the that a large part of the interior of the complex can be controlled (Doc. nº photograph #2).

Fourth. In relation to the information of the video-surveillance system in the report issued by the State Security Forces and Corps, the presence of of various posters, although the following is reflected:

"...the company name is not appreciated, the logo corresponding to Rodych Security, made a call to the company Rodych which states that they do not have contract with that address since 2013, and in it there is no evidence of security cameras video surveillance".

The poster as can be seen from the photographs provided (doc.1 photograph nº4) is from a security company, with which there is no contractual relationship since year 2013, not being an approved poster with express reference to the regulations in

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force in data protection and effective indication of the person in charge of the system of video surveillance.

Fifth. Despite the requirements of this organization, the images of what in your case are observed with the installed cameras, making some imprecise and incomplete allegations in relation to the facts object of complaint.

Sixth: There is a previous report from the Civil Guard (Report No. XXXX-XXXXXXX-

XXXX) dated 07/06/18 where after visual inspection the presence of cameras inside the Andalusian “type” Complex, but they have not had access to the monitor where in your case they are captured.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim of date of entry into this body (12/26/18) through which it is transferred as main fact:

“placement of a series of video-surveillance cameras in my home, both in the interior areas of the farm, as well as in the exterior areas, focusing on two of them towards the public thoroughfare (...)” (folio nº 1).

It should be remembered that individuals can install video surveillance cameras although they are responsible for them to comply with current legislation.

The facts described above may affect the content of article 5 letter C) RGPD that provides the following: “Personal data they will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”);

Cameras installed by individuals cannot obtain images of public space, nor be used to control the entrances/exits of the property of individuals, which may affect their personal privacy and/or



family.

Article 18 CE (1978) provides the following: "The right to honour, to personal and family intimacy and to one's own image".

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The TC (vgr. STC 292/2000, November 30), has already declared that art. 18.4

CE, "an institute to guarantee the rights to privacy and honor and the full

enjoyment of the other rights of citizens which, moreover, is in itself "a

fundamental right or freedom, the right to freedom from potential

aggressions to the dignity and freedom of the person from an illegitimate use

of mechanized data processing, what the Constitution calls 'informatics'", which

that has been called "computer freedom" (FJ 6, later reiterated in the

SSTC 143/1994, FJ 7, 11/1998, FJ 4, 94/1998, FJ 6, 202/1999, FJ 2).

The accused party does not deny the facts, although it states that the

denounced system conforms to current legislation, providing a copy of the report of the

Civil Guard (Armillá-Granada) nº XXXX-XXXXXXX-XXXX issued on 07/06/18.

Given the time elapsed between the issuance of the Report (2018) and the presentation

of the complaint, it was considered correct to request a new Inspection Act

eye contact with the local State Security Forces and Bodies.

With the new Official Letter (08/02/19) issued by the Civil Guard, it is confirmed

objectively the existence of five chambers (three exterior) and two interiors that

"They can collect part of the windows where the complainant resides."

The accused party has not provided a screen print (date and time)

that proves what is really observed with the reported cameras,

having a "restraining order" from the complainant.

In this sense, it is necessary to consider the evidence provided by the

denounced (Civil Guard eye report No. XXXX-XXXXXXX-XXXX, given that the same

it is a mere ocular verification, being the relevant the current situation of the system,

as well as, what the accused really sees with them, as the only

responsible for the installation.

Article 1 paragraph 3 of the Organic Law, December 28, on Security Measures

Comprehensive protection against gender-based violence, provides the following:

"The gender violence referred to in this Law includes any act

of physical and psychological violence, including assaults on sexual freedom,

threats, coercion or arbitrary deprivation of liberty.

The presence of the cameras in the complex where the complainant resides,

supposes a limitation to its freedom, which is observed

permanently in their ordinary activities, creating a feeling of "control"

which may affect your right to privacy.

Beyond the protection of the property, where activities have been carried out

by the denounced party, it is necessary to take into account that the

habitual residence of the accused, while the various litigations that the

parties remain in force.

The foregoing leads this body to carry out a weighting of the measure,

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way that the suitability of the video-surveillance system should be analyzed in its current site.

In accordance with the doctrine of the Constitutional Court (vgr. SSTC 66/1995, May 8, FJ 5; 55/1996, of March 28, FFJJ 6, 7, 8 and 9; 207/1996, dated 16 December, FJ 4 e), and 37/1998, of February 17, FJ 8], the constitutionality of any restrictive measure of fundamental rights is determined by the strict observance of the principle of proportionality.

There is no evidence that "theft with force in things" has occurred in the property, being the same provided with sufficient security measures for the protection of the same; Therefore, there are measures that are less harmful to the rights of third parties (eg the placement of a simple audible alarm).

The person denounced, as stated in the Official Letter sent by the Acting Force, must stay away from the property, having a restraining order from it, so that the presence of the cameras controlled by the same, suppose a control disproportionate interior of the enclosure that limits the freedom of his former partner.

So this body considers that as a whole the system installed affects the privacy of the accused, who is controlled permanently by the accused, both when leaving/entering the property, and when enjoying the necessary freedom inside the enclosure, being able to even affect the right of third parties who also access it.

### III

Regarding the obligation to "inform" about the installed system, there is no approved poster adapted to the regulations in force regarding the protection of data.

Article 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides:

“The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information.

In any case, the data controller must keep available to those affected the information referred to in the aforementioned regulation”.

Furthermore, the acting force (Official letter dated 08/02/19) confirms that the posters are not homologated to the regulations in force, and the company that figure in them confirms "that he has not had a contract with that management since 2013".

The "posters" installed, with the heading "Protected with electronic alarm and other security measures" are not approved posters adapted to the new RGPD,

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nor do they allow to identify the person in charge to whom to address to exercise in your case the rights regulated in articles 15 to 22 RGPD.

IV

The Supreme Court (Judgments of July 5, 1998 and March 2, 1999) comes understanding that recklessness exists whenever a legal duty of care is disregarded. care, that is, when the offending subject does not behave with the required diligence.

Diligence whose degree of demand will be determined in accordance with the circumstances concurrent in each case, such as the special value of the protected legal interest or the

professionalism required of the offender. In this sense, the aforementioned Judgment of June 5 of 1998 requires professionals in the sector "a duty to know especially the applicable rules".

Applying the previous doctrine, the National High Court requires the entities that operate special diligence in the data market when carrying out the use or treatment of such data or transfer to third parties. And this because being the one of the data protection a fundamental right (Judgment of the Constitutional Court 292/2000), the repositories of these data must be especially diligent and careful when operating with them and should always opt for the interpretation more favorable to the protection of the legal rights protected by the norm. In this sense, among others, Judgments of the National High Court dated February 14 and 20 September 2002 and April 13 and May 18, 2005).

The mere commission of an administrative infraction—objective type—is not enough to time to proceed to impose an administrative sanction.

Guilt as reproach to the active subject of the injury of the legal interest protected, is evident when the subject voluntarily performs the typical behavior intentionally directed to obtaining the unlawful result, which is sought and

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There must therefore be willful or negligent conduct, whether gross negligence or mild or simple, depending on the degree of neglect. And there is no negligence, nor therefore guilty and punishable infraction, "when the necessary diligence has been put into the compliance with the obligations required in terms of LOPD".

In the present case, the defendant is aware (by transferring the "facts" this Agency) of a situation of "discomfort" of the reported in relation to the video-surveillance camera system installed, far from showing an attitude collaborative, providing all the necessary documentation to prove the legality

of the system, does not proceed to provide the screen impression (date and time) of the monitors, so at least one could speak of slight negligence in the conduct examined.

Based on the foregoing, the allegation of exclusive private property, put forward by the defendant must be dismissed, despite stating that there is "firm" judicial pronouncement that requires the eviction on 06/20/19, "something that

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should have done by now."

The brief presented presents a strikethrough in one of the key paragraphs for its analysis, apart from the fact that in order to assess it as such it must be accompanied by the rest of the documents related to it.

Similarly, to date in his case of effective eviction, the freedom ambulation of the complainant cannot be affected, which must be able to enter/leave the domicile established as habitual residence, with the chambers well in advance of the execution, in his case, of the pronouncement court provided.

Therefore, based on the foregoing, the element is considered proven. subjective, when the defendant acts at least negligently, not collaborating with this body in the required terms and concealing at all times what it is really observed with the cameras in question.

v

In accordance with the evidence obtained throughout the sanctioning procedure,

it is considered that the accused has a video surveillance camera system without the purpose of it being clear, without being legally informed in accordance with regulations in force, as well as, that it has interior chambers oriented towards the complainant's area of residence, without just cause.

The facts described above imply an affectation to the content of the article 5 paragraph 1 letter C) RGPD.

Article 83 section 5 of the RGPD provides the following:

“Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

Article 71 LOPDGDD (LO 3/2018, December 5) provides the following:

“The acts and behaviors referred to in the regulations constitute infractions. sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

Article 72 section 1 of the LOPDGDD provides: "Depending on what established in article 83.5 of Regulation (EU) 2016/679 are considered very serious and Infractions that suppose a substantial violation will prescribe after three years. of the articles mentioned therein and, in particular, the following:

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a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGD:

-the circumstantial evidence provided indicates that the cameras are oriented into public and/or private space, without just cause affecting the right of pedestrians, (art. 83.2 a) RGD).

-There are proven indications that the cameras exercise control excessive entry/exit of the property, affecting one of the owners of the itself, being installed with an apparent intention to limit and control the freedom of the complainant, which is seen privacy by the device in question (art. 83.2

b) GDPR).

The accused is warned that with the installation of a security camera system video-surveillance may be incurring --the conduct described-- in an alleged act of gender-based violence "by limiting the freedom" of the complainant, exercising control by part of who was linked by a relationship of affectivity that exceeds the purpose of this type of device.

Article 1 section 3 of LO 1/2004, December 28, on Measures of

Comprehensive protection against Gender Violence provides: "Gender violence to referred to in this Law includes any act of physical and psychological violence, including assaults on sexual freedom, threats, coercion or arbitrary deprivation of liberty".

With the installation of this type of device, the person can be "intimidated" monitored, assuming psychological violence, by creating the awareness of being permanently observed and controlled in their daily tasks, with the purpose of



of isolating her from her family and/or social environment.

New technologies should not be used for spurious purposes far from the use for which they have been conceived, with a broad jurisprudential base, where explains how they are used in the context of couples in the context of domestic violence gender, mainly to exercise control over the partner or ex-partner.

In accordance with the foregoing, in the absence of prior complaints for facts similar, in the case of an individual, but given the circumstances of the case in concrete, and the seriousness of the reported facts, it is considered correct to impose a financial penalty of €10,000 (Ten Thousand Euros), for the installation of a video-surveillance oriented towards public roads and/or private areas of the affected party without just cause, from the legal point of view.

SAW

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the

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provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

In the present case, you must prove the immediate disconnection (vgr. Minutes notarial document, Local Police Report, etc.) of the installed cameras, and must provide all

those documents (including those related to ownership of the property) that prove the legality of the installed system, including photographs with date and time of what is observe with the camera(s) in question, with indication on a situation plan, as well how to install sign(s) in a visible area adapted to the new regulations in force.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Mr. B.B.B., with NIF \*\*\*NIF.1, a fine of €10,000 (Ten Thousand Euros), for a continued violation of article 5.1 c) of the RGPD, by having a video-surveillance system that disproportionately affects the privacy of the denounced, typified in article 83.5 a) of the RGPD, being punishable in the terms of art. 58.2 GDPR.

SECOND: REQUIRE the accused to adopt the necessary measures, to correct the illegalities described, contributing within ONE MONTH from the notification of this act, reliable evidence of compliance with the measures required, based on the provisions of art. 58.2 d) GDPR.

-Removal of the interior chambers oriented towards the habitual residence of the

-Accredit the viewing of the exterior cameras (eg screen printing reported.

with date and time).

-Installation of informative signage adapted to the regulations in force, indicating the person responsible for processing the images.

THIRD: NOTIFY this resolution to Don B.B.B. and REPORT the result of the actions to the complainant Doña A.A.A.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise,

it will be collected during the executive period.

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

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided 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, may provisionally suspend the firm resolution in administrative proceedings if the 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-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative 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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