

□ Procedure No.: EXP202100351

## - RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the complaining party) dated July 7, 2021  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against DISTRIBUCIONES FROIZ, S.A. with NIF A36036739 (in  
hereafter, the party claimed). The grounds on which the claim is based are  
following:

“I own a flat and a garage located in the aforementioned building. To access  
garages, all owners must clear an area where the establishment  
FROIZ has other garages for customers. In this space, FROIZ has arranged  
an area with "dome" cameras, a total of three. However, that area is  
common space of the building, so it is not owned by FROIZ”  
I consider that FROIZ, under the current RGPD, does not have the power to install  
cut down cameras in common areas of the building, much less place three cameras  
dome type, with a width of 360°, where my data and that of the other owners  
of the garage, roam freely in the hands of a third party”

On the other hand, in the informative poster, the person in charge of FROIZ is not identified  
to exercise data protection rights. (folio no. 1).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5  
December, of Protection of Personal Data and guarantee of digital rights (in  
hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-  
dated 07/09/21, to proceed with its analysis and inform this Agency on the

period of one month, of the actions carried out to adapt to the foreseen requirements  
cough in the data protection regulations.

THIRD: On 08/04/21 a written response was received from the claim regarding  
on the "facts" exposed, stating succinctly the following:

"It is attached as Documentary Block No. 1 (Photo of the poster that is installed in all  
two accesses to the FROIZ SA distribution stores, where there is an installation of  
video surveillance cameras.

The management of the video-surveillance system is carried out internally through the  
Internal audit department (Area Managers), store managers and assistants  
those in charge of FROIZ Distributions.

The monitors that allow viewing the captured images are located  
inside an office with restricted access that prevents access to non-autonomous staff  
curly, including the clientele.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/10

A photograph is attached as Evidence Document No. 5 (...)

For all these reasons, I request: Please consider this document presented in a timely manner and  
for admitted the documents that are attached on the occasion of the request for do-  
documentation done".

FOURTH: On August 6, 2021, the Director of the Spanish Agency for Pro-  
Data protection agreed to admit for processing the claim presented by the claimant party.  
keep.

FIFTH: On September 16, 2021, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.c) of the RGPD and Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

SIXTH: On 10/04/21 a written statement was received from the respondent--

DISTRIBUCIONES FROIZ, S.A—stating the following:

Absence of assessment of the documentation provided. Violation of art. 24 CE.

This part understands that the Nullity of actions must be decreed and consequent File of this procedure.

However, this part to his surprise has been able to verify that it has not been taken into account the information provided.

This omission on the part of the AEPD has deprived this party of being able to intervene in an effective way in the procedure from its origin, and therefore be heard (...)

Bad faith of the Complainant. (...) this part wants to show the animosity of the claimant against this party. For years, the complainant has filed (unsuccessfully) numerous complaints, with the sole purpose of causing unjustified harm.

Legality of the installation of the devices. As can be deduced from the information sent on 08/04/21, the surveillance devices installed are in accordance month to the provisions of the data protection regulations (...).

The garage where the devices are located is private. unlike-  
ence of what the complainant manifests, which demonstrates a total ignorance of the reality of the building is not a community garage.

(...) as evidenced in the deed of horizontal property of the property (do-

c.nº 3) farm nº 107 where the Garage is located, does not have the condition of parking community, but independent farm.

The aforementioned deed includes the statutes of the Community in its article 2

d). this expressly excludes farm nº 107, Local 2 which occupies the FROIZ Garage

this condition (...)

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/10

Existence of a right of way. On the farm of this property falls a right of way that enables access to the community garage. This situation does not It must be an impediment for the placement of informative devices.

Compliance with the duty of information. Those affected have been at all times, informed of the conditions in which their data will be subject to "treatment", both for the placement in the garage itself and other points of the supermarket of posters informative that collect the information (...).

A photo of the informative posters is provided as Documentary Block No. 3, not only in the Garage itself, but in the supermarket that gives access.

For all these reasons, insofar as the video-surveillance devices comply with the provided by the legal system in relation to the installation of devices

by FROIZ, this party requests: Filing of the filed complaint and subsidiarily, the Nullity of the procedure is declared by not having taken into account the documentation provided by this party.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

#### FACTS

First. The facts bring cause of the claim dated 07/07/21 through the which the following facts are transferred to this body:

"I own a flat and a garage located in the aforementioned building. To access

garages, all owners must clear an area where the establishment

FROIZ has other garages for customers. In this space, FROIZ has arranged

an area with "dome" cameras, a total of three. However, that area is

common space of the building, so it is not owned by FROIZ”

I consider that FROIZ, under the current RGPD, does not have the power to install

cut down cameras in common areas of the building, much less place three cameras

dome type, with a width of 360°, where my data and that of the other owners

of the garage, roam freely in the hands of a third party”

On the other hand, in the informative poster, the person in charge of FROIZ is not identified

to exercise data protection rights. (folio no. 1).

Second. The entity FROIZ SAU is identified as the main responsible entity,

who does not deny having installed an ideo-surveillance camera system for reasons

of security.

Third. It is accredited that the system is provided with an informative poster(s)

adjusted to the regulations in force, as well as an effective address before which to be able to

exercise the rights recognized in articles 15-22 RGPD.

Provides documentary evidence (Annex I Doc. 3) that allows the cartels to be verified

installed.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/10

Fourth. It is accredited that the area where the video cameras are installed

Surveillance is a private area—exclusive ownership of the claimed--.

This aspect is reflected in the Horizontal Property Deed of the Building

\*\*\* ADDRESS.1 (Proof Document No. 3), where the area is classified as

Independent farm.

## FOUNDATIONS OF LAW

Yo

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 resolve this procedure.

II

Before going into the substance of the matter, it is necessary to analyze the request for Nullity of the procedure put forward by the respondent in writing dated 10/04/21 when considering "that the documents provided by it have not been taken into account".

On this point, it should be noted that after consulting the database of this Agency

On 07/09/21, the claim filed in order to answer in law on the facts object of complaint.

The response from the respondent did not occur as evidenced in the computer system of this Agency until 08/04/21, without clarifying in the opinion of this body the legality of the system that is the subject of the complaint in its entirety.

Contrary to what has been argued, the initial allegations and documentary evidence contributed if they have been taken into account, not assuming the opening of the current procedure a violation of the right to defense of the claimed, which has completed its initial allegations in the corresponding procedural phase or has proceeded to explain aspects that in his initial exposition were not clear to this Agency.

Therefore, the application for annulment put forward is dismissed, since it does not be affected the right to the presumption of innocence of the affected, taking into account

account all the allegations and evidence provided by it.

III

In the present case, the claim dated 07/07/21 is examined by me-

gave from which the following is transferred as the main fact:

"I own a flat and a garage located in the aforementioned building. To access

garages, all owners must clear an area where the establishment

FROIZ has other garages for customers. In this space, FROIZ has arranged

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/10

an area with "dome" cameras, a total of three. However, that area is

common space of the building, so it is not owned by FROIZ" (folio nº 1).

The facts are specified in the installation of a camera system in a

access area to the community garage, without having informed the group of owners

users, presenting the informative signage deficiencies not adjusted to law.

Article 6 RGPD "The treatment will only be lawful if at least one of the

the following conditions:

a) the interested party gave their consent for the processing of their personal data

final for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at the request of the latter of preventive measures

contractual;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

and)

d) the processing is necessary to protect the vital interests of the data subject or of another natural person;

the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the responsible for the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that over said interests do not prevail the interests or the rights and freedoms fundamental data of the interested party that require data protection personal, in particular when the interested party is a child.

It should be remembered that individuals are responsible for ensuring that the systems more installed comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

In any case, the cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as controls lar transit areas of the same without just cause.

With this type of device it is also not possible to obtain image(s) of space public service, as this is the exclusive competence of the Security Forces and Corps of the State.

It should be remembered that even in the case of a "simulated" camera, the

It should preferably be oriented towards private space, since it is

considers that this type of device may affect the privacy of third parties, which



they are intimidated by it in the belief of being permanently recorded

tea.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/10

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

Owners who wish to place surveillance cameras in their parking spaces garage, require an authorization from the community of owners.

The installation of cameras in communities of owners or garages requires of the approval of the group of community members of the same in the terms of art. 16

LPH, otherwise an affectation (data processing) without function is produced.

legal documentation, since the owners of the places did not grant the consent feeling for the treatment of your personal data.

IV

In accordance with the "evidence" available in this proceeding, sanctioning procedure, it is considered that the claimed party has a system of video-surveillance cameras that presumably affects the rights of third parties without just cause.

Respondent in pleadings dated 10/04/21 denies the accusations discharged, considering that we are not talking about a community zone, but a private area owned by the claimed.

In support of his allegations, he provides documentary evidence (Doc. No. 3 Annex Do-document) Horizontal Property Deed that proves that the garage is not community

private, but exclusive, the claimant's place being affected by an easement of step.

In the Deeds of Horizontal Property Building \*\*\*ADDRESS.1 it is established that it is made up of "two basement floors, each of which occupies the surface constructed area of 1500 square meters, intended for open parking spaces, bo-degas, installation rooms, premises, roads and common areas".

At Point III-Horizontal Division of the building located in Ourense, \*\*\*ADDRESS.1--.

#### A) INDEPENDENT PROPERTIES.

Farm Number One Hundred and Seven (Local Two (2)--, located in the First Basement Floor. "Tie- It has a useful area of 342 meters and 75 square decimetres, of which 199 meters and 79 square decimetres are allocated to fifteen parking spaces originally marked mind with the numbers 22-36, both inclusive (...)".

Article 2 "Common Elements: Definition".

"Common elements are those listed in article 396 CCivil, wording L.8/1999 sole additional provision (...)

d) the portal, the pedestrian stairs and the traffic lanes of the garages, exception made of the section of circulation road that runs through Local 2, which is exclusive and subject to right of way (...) (\*bold belongs to the AEPD).

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

7/10

The art. 10 of the Scriptures "Regime of the basements of the property".

"The owners of independent properties of the 1st and 2nd basements, may build become subcommunities of garages that will decide on matters of interest to them

who are independent of the generals of the property, being able to open bank accounts

carias in the name of said subcommunity”.

“Access from the outside to the farms located in the basements of the building

It will be carried out by the access ramp to the garage, the pedestrian stairs and the parking area.

passage of easement established on premises 2 (Property number 107)”.

In Point III “Constitution of Right of Way”.

The Mercantil “Promociones y Construcciones de Obra Betán S.L” constitutes the

Next:

-Easement or right of way for vehicles and their users-

mos, on farm No. 107 (Local 2), servient estate, in favor of the other farms

members of the basements of the building (dominant properties).

The right of way is a real right, through which the property of

a farm (servient property), so that from it you can leave or enter another (pre-

dominant god).

According to the literal wording of article 564 of the Civil Code, the right of way will have

gar according to the following:

“The owner of a farm or estate, nestled among other aliens and without exit,

faces a public road, has the right to demand passage through the neighboring estates, prior to the

corresponding compensation.

If this easement is constituted in such a way that its use can be continuous for all

the needs of the dominant estate by establishing a permanent road, the in-

Compensation will consist of the value of the land that is occupied and the amount of the per-

judgments that are caused in the servient estate”

We must start from the premise that personal data must be adequate, relevant,

net and limited to the purposes for which they are processed.

In this case, it is necessary to analyze whether the measure adopted by the respondent

installation of a video-surveillance system—can be considered adjusted to the principle of proportionality.

The installation of the system responds to a need for security of the facilities and goods, being responsible for a company of recognized reputation in the sector food, entrusted to the wholesale and retail sale of fresh products, food, warehouse and drugstore, through its commercial network.

The measure adopted finds legal support, since any individual (more

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

8/10

even a company) can install this type of system for security purposes of the installations and their assets—judgment of suitability--.

The cameras installed, in a private area, as it is an independent property, allows not only to ensure the safety of the facilities, but also that they are necessary to control the access of vehicles and the loading/unloading of products that subsequently Mind they are installed in the adjacent supermarket.

The presence of the cameras allows a control of the area and a certainty of the possible problems that may occur in a transit area. gives for supply trucks-judgment of need--.

Finally, it should be noted that although it is true that there is a "treatment of data" of the claimant, it is no less true that he is favored by the measure It provides greater security to the facilities, against possible thefts in the garage area.

The garage area is not a space reserved for the privacy of the claimant or

of third-party neighbors (as), but a transit zone being the domicile of the same where of the tasks of their ordinary life are developed the space to protect, being the collection of your minimum data and justified by the reasons stated.

The existing jurisprudence regarding the capture of spaces must be taken into account. community services. As stated in the Sentence of the Constitutional Court 144/1999, of 07/22/2011, in FJ 8, "... the role of the fundamental right to privacy of the arti- Article 18.1 CE is to protect against any invasion that may be carried out in that area of personal and family life that the person wishes to exclude from knowledge of others and the interference of third parties against their will.

However, it can hardly be sustained, in any case, that it assists those who enter and leave in the community car park, a place exclusively reserved for parking. ment of neighbors' vehicles, an expectation of safeguarding an area reserved and immune to the action of others. It cannot be understood, therefore, to violate Rated this right.

Along the same lines is judgment 00137/2015 issued by the Criminal Court No. 1 of Vigo dated April 22, 2015, which includes in its Foundation of Primary Law first: (...) "There is abundant and peaceful jurisprudence that, when dealing with the recordings tions by video, considers that these only affect the right to privacy if have been carried out in what constitutes the dwelling or spaces where the citizen develops his private activity but that said attack does not occur if the recording is carried out in open spaces or common areas of a building, as is the case occupies us by having recorded images in a garage that is a common area, being indifferent given that the community of owners had not given permission to install the mara since this does not affect.

The system is duly informed by placing badges informative, which allow you, if necessary, to control your personal data

staff.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

9/10

The impact of the measure on the claimant's personal sphere is minimal or not greater than the daily control to which he is subjected in case of accessing other establishments. facilities or Centers equipped with this type of video-surveillance system, there is no evidence misusing them outside the cases permitted by the regulations in force.

Article 89 of Law 39/2015 (October 1) provides the following: "The institutional body tractor will resolve the completion of the procedure, with filing of the proceedings, without that it is necessary to formulate the resolution proposal, when in the instruction tion procedure it becomes clear that any of the following circumstances

c) When the proven facts do not constitute, in a manifest way, an infringement administrative.

Therefore, based on the above, the installation of the video-surveillance camera system, which has the proper information sending you the data controller, as well as the way to exercise the rights recognized in the regulations in force if necessary (weighting rule).

v

Based on all of the above, it can be concluded that it has not been proven that the facts objected to transfer act constitute an administrative offense in the matter at hand,

On the one hand, the presence of informative signs has been proven in the main

accesses through documentary evidence and on the other it has been shown documentary-

mind the exclusive nature of the area where the video camera system is installed.

surveillance, considering their presence correct for the reasons ex-

posts, so it is appropriate to order the File of this procedure.

Lastly, the transcendence of the rights at stake is recalled,

avoid the instrumentalization of this Agency for matters far from the regulations

of data protection or whose analysis corresponds essentially to the jurisdictional bodies

competent authorities by reason of the matter (vgr. SAN 07/08/10)

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence

gives the commission of any administrative infraction in the matter that concerns us.

SECOND: NOTIFY this resolution to DISTRIBUCIONES FROIZ, S.A. and

REPORT the result of the actions to Don A.A.A.

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.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

10/10

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.

Sea Spain Marti

Director of the AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

938-131120

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)