

Procedure No.: PS/00136/2019

RESOLUTION: R/00267/2019

In procedure PS/00136/2019, instructed by the Spanish Agency for Data Protection to the entity FORMAUTO ALVAREZ FERNANDEZ, S.L., given the complaint filed by Mrs. A.A.A. and by virtue of the following,

FACTS

FIRST: Mrs. A.A.A. (hereinafter, the claimant) dated December 10, 2018 filed a claim with the Spanish Agency for Data Protection, motivated by the processing of data carried out through cameras of a security system. video surveillance whose owner is FORMAUTO ALVAREZ FERNANDEZ, S.L. with NIF B93570364 (hereinafter claimed) installed in ***ADDRESS.1.

The grounds on which the claim is based are "installation of a video-surveillance cameras, without an informative poster informing the respect" (folio nº 1).

Provides documentary evidence (photographs 1, 2 and 3) that confirm the absence of any sign in the entrance area to the workshop.

SECOND: On 01/16/19, the claim was TRANSFERRED to the entity FORMAUTO ALVAREZ FERNANDEZ, S.L., so that it could claim about the characteristics of the system and prove that they have the mandatory informative posters, stating as "Notified" in the computer system of this body.

THIRD: Consulted on 03/20/19 the computer system of this body, There is no evidence that any response has been given for the appropriate legal purposes.

FOURTH: On May 17, 2019, the Director of the Spanish Agency for Data Protection proceeded to issue Agreement to Start the procedure referenced sanctioning party, stating the same as notified in the system

computer of this organization.

PROVEN FACTS

First. On 12/10/2018, this Agency received a claim from the complainant by means of which the following is transferred as "fact":

"Installation of a video-surveillance camera system, without the availability informative poster informing about it" (folio nº 1).

Second. The Formauto entity is identified as the main responsible entity

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Third. There is evidence of the absence of an informative poster indicating that it is a video-monitored area.

Fourth. There is no evidence that he has informed the employees or the union representatives of the installation of the video-surveillance system.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (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 dated 12/10/18 by

means of which the following is transferred as "fact":

"Installation of a video-surveillance camera system, without the availability of an informative poster informing about it" (folio nº 1).

The exposed facts could suppose the commission, on the part of the defendant of an infringement of article 12 of the RGD, in the terms referred to both in the aforementioned article, as in articles 13 and 14 of said rule, and the respondent must give due compliance with the provisions of article 3 of Instruction 1/2006, of 8 November, from the Spanish Data Protection Agency. Consequently, the claimed must:

1. Place at least one informative badge in the video-monitored areas located in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 RGD, in the distinctive aforementioned information must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in these provisions.

2. Keep available to those affected the information referred to in the quoted GDPR.

The art. 22. 4 LOPDGDD 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”.

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III

According to the evidence provided, it is identified as the main responsible of the installation of the cameras the entity--Formauto Alvarez Fernández S.L.--.

It has been verified that the establishment has devices for recording, being the same devoid of the mandatory informative poster(s) to the regard.

The installed cameras cannot permanently monitor the space of work of the employee (a), as well as they cannot obtain images of the areas of rest of the same (vgr. coffee machines, leisure room, etc).

IV

In accordance with the foregoing, it can be concluded that the reported establishment lacks information poster, informing workers that it is a video zone monitored, affecting the right to information contained in art. 13 GDPR.

The informative poster(s) must indicate the person in charge before whom be able to exercise the rights recognized within the framework of the RGPD.

The video-surveillance cameras cannot be oriented in the same way. permanently towards the spaces where they develop their activity (eg towards the screen, leisure areas, etc), and must be informed of the purpose of the system (vgr. security reasons of the company, etc).

It is recalled that the lack of collaboration with this body may lead to the

commission of a SERIOUS infringement, in accordance with the provisions of art. 73.1 letter o)

LOPDGDD.

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00136/2019) to the entity FORMAUTO ALVAREZ FERNANDEZ,

SL for non-compliance with the provisions of art. 13 RGPD, having installed a

video-surveillance camera system without the mandatory information poster, typified

in art. 83.5 b) RGPD, being the same sanctioned by virtue of the provisions of the

article 58.2 GDPR.

2.- REQUEST the reported entity FORMAUTO ALVAREZ FERNANDEZ, S.L.

so that within a period of one month from this act of notification proceed to comply with the

following measures:

-You must proceed to place the mandatory informative posters indicating

It is a video-monitored area.

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-You must inform this Agency providing documentary evidence (photograph

with date and time) that proves compliance with the measure.

-You must inform the workers or, where appropriate, the representatives of

the same, of the purpose of the treatment, so that they have

knowledge of the treatment and use that can be given in your case to your

personal image.

3.- NOTIFY this Agreement to the reported entity FORMAUTO ALVAREZ

FERNANDEZ, S.L. and INFORM the denouncing party Mrs. A.A.A.

Against this resolution, which puts an end to the administrative procedure (article 48.2 of the LOPD), and in accordance with the provisions of articles 112 and 123 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, the interested parties may optionally file appeal for reconsideration before the Director of the Spanish Data Protection Agency within one month from the day following the notification of this resolution, or, directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National Court, in accordance with the provisions of the Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within the period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned legal text.

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