

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 01

March

2021

DECISION

DKE.561.8.2020

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended) in connection with Art. 7 and art. 60 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) and pursuant to art. 31, art. 58 sec. 1 lit. a) and lit. e) and art. 58 sec. 2 lit. b) Regulation of the European Parliament and of the EU Council 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws UE L 119 of 04/05/2016, p. 1, with the amendment announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2), after conducting administrative proceedings on the imposition of an administrative fine on E. Sp. z o.o., President of the Personal Data Protection Office, reminds E. Sp. z o.o., for violation of the provisions of Art. 31 and art. 58 sec. 1 lit. a) and lit. e) Regulations of the European Parliament and the EU Council 2016/679 and the EU Council 2016/679 of 27 April 2016. on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws UE L 119 of 04.05.2016, p. 1, with the amendment announced in the Journal of Laws UE L 127 of 23/05/2018, p. 2.), consisting in the lack of cooperation with the President of the Office for Personal Data Protection in the performance of his tasks and failure to provide the President of the Office for Personal Data Protection with access to personal data and information necessary for the performance of its tasks.

Justification

The Personal Data Protection Office received a complaint from Mr. J. F. (hereinafter referred to as the "Complainant") about irregularities in the processing of his personal data by E. Sp. z o.o. (hereinafter referred to as the "Company"). The President of the Personal Data Protection Office (hereinafter also: the "President of the Personal Data Protection Office"), as part of the initiated administrative procedure, conducted in order to consider the submitted complaint (reference number [...]), asked the

Company in a letter of [...] December 2019 to comment - in within 7 days from the date of delivery of the said correspondence - to the content of the complaint and to answer the following questions regarding the case:

- 1) whether the Company processes or processed the complainant's personal data, and if so, on what legal basis, to what extent and for the purpose;
- 2) whether the Company provides or disclosed the Complainant's personal data, i.e. his private address and telephone number to the Company's clients, and if so, when, on what legal basis and for what purpose.

The above letter was delivered to the Company on [...] December 2019. In a letter of [...] December 2019, the President of the Management Board of the Company, Mr. JT, provided the President of UODO with laconic explanations in which he informed about the suspension of the Company's business operations starting from [...] August 2019 and the fact that the Company has not employed any employees since then. Moreover, the above-mentioned he stated that he was on sick leave himself until [...] January 2020, and therefore he would provide exhaustive explanations on the matter after the above-mentioned deadline. As confirmation of the alleged circumstances, the President of the Management Board of the Company submitted a copy of the resolution of the Management Board of the Company on the suspension of business activities for an indefinite period and a copy of a medical certificate confirming his inability to work. In turn, in a letter dated [...] January 2020, Mr. J. T. informed about the extension of the sick leave until [...] January 2020.

Recognizing the above explanations as insufficient, the President of the Personal Data Protection Office (UODO), by letters of [...] January 2020 and [...] June 2020 (delivered to the Company - on [...] February 2020 and [...] June 2020, respectively), called the Company again to respond to the content of the complaint and to provide explanations, setting the Company each time a 7-day period for replying. The company was also advised that failure to provide explanations within the prescribed period will result in taking control measures against it, as well as will result in the imposition of an administrative fine, in accordance with Art. 83 sec. 5 lit. e) Regulation 2016/679. In response to the above, by letters of [...] February 2020 and [...] June 2020, the President of the Management Board of the Company again notified of the suspension of business activities by the Company and of the ongoing - and related to him personally - inability to work indicating the possibility of responding to the calls for explanations addressed to the Company after returning to the performance of official duties. As evidence of the abovementioned circumstances, the above-mentioned submitted: copies of subsequent sick leaves and a printout from the Electronic Services Platform of the Social Insurance Institution, which showed that Mr. J. T. was continuously on sick leave in

the period from [...] December 2019 to [...] June 2020.

Due to the failure by the Company to provide the information necessary to resolve the case No. [...], the President of the Personal Data Protection Office initiated ex officio against the Company - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679 - these administrative proceedings regarding the imposition of an administrative fine on the Company, in connection with the Company's breach of Art. 31 and art. 58 sec. 1 lit. a) and e) of Regulation 2016/679. The Company was informed about the initiation of the procedure by letter of [...] August 2020, properly delivered to it on [...] August 2020. This letter was also requested by the Company - in order to establish the basis for the penalty, pursuant to Art. 101a paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) - to present the Company's financial statements for 2019 or, in the absence thereof, a statement on the amount of turnover and financial result achieved by the Company in 2019.

In response to the letter informing about the initiation of administrative proceedings with reference number DKE.561.8.2020, the President of the Management Board of the Company sent a letter to the President of UODO of [...] August 2020, in which he submitted explanations regarding the case No. [...] allowing the President of the Personal Data Protection Office to continue the above-mentioned of the proceeding initiated by the complaint of Mr. J. F. The President of the Management Board of the Company explained in particular that the Company employed the Complainant until [...] August 2020 as a sales coordinator. As part of his duties, the Complainant dealt with maintaining relationships with customers, settling downloads and other financial matters, and his personal data was made available to customers with his consent. During the period of employment, the complainant had a business e-mail address, and the correspondence he sent had a footer with his name and surname in it. The applicant also had a business telephone number and the contact number assigned to him was made available to the public. Information about the employee was shared with each message he sends, as well as in the case of other form of communication with the client, e.g. by phone. Referring to the content of the complaint. Moreover, the President of the Management Board of the Company indicated that the address mentioned in the Complainant's letter, ie [...], was the address of one of the Company's branches, therefore it did not constitute private personal data of Mr. J. F. stated that the Company filed a suit against the Complainant for the appropriation of the Company's property in the amount of approximately PLN [...]. Pointing to the reason for the failure to provide exhaustive explanations within the time limit set by the data protection authority, the President of the Management Board of the Company explained that the delay was solely due to his poor health.

Recognizing the above-mentioned information insufficient for the substantive resolution of the complaint procedure with ref. no. [...], by letters of [...] October 2020, [...] November 2020 and [...] December 2020, the President of UODO again asked the Company to supplement the explanations submitted so far.

While the request for additional information of [...] November 2020 - properly delivered to the Company on [...] November 2020 - remained unanswered, in response to the other calls, the Company by letters of [...] October 2020 and [...] December 2020, she corrected the previously provided data, explaining that the Complainant was employed by the Company until [...] August 2019 (and not 2020, as originally indicated). Moreover, the Company explained that the starter with the assigned telephone number [...], which was used by the Complainant during the period of employment, was purchased with the Company's funds. However, the company did not have any information as to whether the Complainant was still a user of the above-mentioned telephone number.

Having obtained additional explanations from the Company, in a letter of [...] January 2021, the President of the Personal Data Protection Office notified it as a party to the proceedings with reference number [...], to collect evidence sufficient to issue an administrative decision in the case at hand.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

Pursuant to Art. 57 sec. 1 lit. a) Regulation 2016/679, the President of the Personal Data Protection Office - as a supervisory authority within the meaning of art. 51 of Regulation 2016/679 - monitors and enforces the application of this regulation on its territory. As part of his competences, the President of the Personal Data Protection Office examines, inter alia, Complaints brought by data subjects shall investigate these complaints to the appropriate extent and inform the complainant of the progress and the outcome of these proceedings within a reasonable time (Article 57 (1) (f)). In order to enable the performance of such defined tasks, the President of the Personal Data Protection Office has a number of specified in Art. 58 sec. 1 of Regulation 2016/679, the rights in the scope of conducted proceedings, including the right to order the administrator and the processor to provide all information needed to perform its tasks (Article 58 (1) (a)) and the right to obtain access from the administrator and the processor to all personal data and information necessary for the performance of its tasks (Article 58 (1) (e)). Moreover, the President of the Personal Data Protection Office is entitled to a number of provisions specified in Art. 58 sec. 2 corrective powers, including reminders to the administrator or processor in the event of violation of the provisions of

Regulation 2016/679 by processing operations. Violation of the provisions of Regulation 2016/679, consisting in the failure of the controller or the processor to provide access to the data and information referred to above, resulting in the violation of the authority's rights specified in art. 58 sec. 1 (including the right to obtain data and information necessary to perform its tasks), and is subject - in accordance with art. 83 sec. 5 lit. e) in fine of Regulation 2016/679 - an administrative fine of up to EUR 20,000,000, and in the case of an enterprise - up to 4% of its total annual worldwide turnover from the previous financial year, with the higher amount being applicable. It should also be indicated that the controller and the processor are obliged to cooperate with the supervisory authority in the performance of its tasks, as provided for in Art. 31 of Regulation 2016/679. The President of the Personal Data Protection Office, acting pursuant to art. 58 sec. 2 lit. b) of the Regulation 2016/679, it may also consider it justified to provide the Company with a reminder regarding the infringement of the provisions of art. 31 and art. 58 sec. 1 lit. a) and lit. e) Regulation 2016/679. Pursuant to recital 148 of Regulation 2016/679, for more effective enforcement of the provisions of the Regulation, sanctions, including administrative fines, should be imposed for breaches of the Regulation, in addition to or instead of appropriate measures imposed by the supervisory authority under this Regulation. If the infringement is minor, the fine may be replaced by an admonition. However, due attention should be paid to the nature, gravity and duration of the breach, whether the breach was not intentional, the steps taken to minimize the harm, the degree of liability or any previous relevant breach, how the supervisory authority became aware of on a breach, on compliance with the measures imposed on the controller or processor, on the application of codes of conduct, and on any other aggravating or mitigating factors.

Referring the above-mentioned provisions of the Regulation 2016/679 to the facts established in this case, it should be stated that the Company as the administrator of personal data and at the same time a party to the proceedings with reference number [...], by failing to provide a substantive response to the requests of the President of UODO of [...] December 2019, [...] January 2020 and [...] June 2020 to submit explanations, breached the obligation to provide the President of UODO with access to necessary information for the performance of its tasks resulting from Art. 31 and 58 sec. 1. lit. a) and lit. e) Regulation 2016/679. In this case, the information essential for the further course of the proceedings was the confirmation of the legitimacy of the complaint - including establishing the legal and factual relations between the Company and the Complainant. Preventing access to information requested by the President of the Personal Data Protection Office (UODO), which was undoubtedly in its possession, prevented a thorough examination of the case and resulted in prolongation of the proceedings,

which is contrary to the basic principles governing administrative proceedings - specified in Art. 12 sec. 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256), the principles of insight and speed of proceedings.

It should be mentioned here that the fact of suspension of the business activity by the Company, which was referred to by the President of the Management Board of the Company in letters addressed to the President of the Personal Data Protection Office in the initial stage of the proceedings, ref. No. [...], did not release her from the obligation to provide explanations in the proceedings conducted by the supervisory authority. According to the wording of Art. 25 sec. 2 points 4 and 5 of the Act of 6 March 2018, Entrepreneurs' Law (Journal of Laws of 2021, item 162), during the period of suspension of economic activity, the entrepreneur has the right or obligation to participate in court proceedings, tax and administrative proceedings related to with business activities performed before the date of suspension of business activities, and also performs all obligations prescribed by law. As it follows from the above, the Company, as an entrepreneur, had a legal obligation to cooperate with the President of the Personal Data Protection Office under the provisions of the national law, which was not endured either by the suspension of the Company's operations or by the fact of being on sick leave of the President of its Management Board. The President of the Management Board, as a person authorized to represent the economic entity concerned by this case, could appoint an attorney to conduct the Company's affairs for the period of his incapacity to work. Thus, the calls of the President of the Personal Data Protection Office to provide explanations, addressed to E. Sp. z o.o. guilty of waiting for an answer. In view of the above, it should be considered that the Company's explanations as to the reasons for not responding to the requests of the President of the Personal Data Protection Office do not constitute grounds for waiving the Company's liability in this respect.

In the opinion of the President of the Personal Data Protection Office, the attitude of the Company indicates a lack of purposefulness in its operation. It must be taken into account that the Company did not completely ignore the correspondence addressed to it in the case no. [...], Mentioning the obstacles which, in its opinion, justified the inability to provide comprehensive explanations. On the contrary, the President of the Management Board of the Company reacted to each of the letters sent to the Company, declaring his will to cooperate with the President of the Personal Data Protection Office in clarifying the facts of the case initiated by the complaint of Mr. J. F. - immediately after returning to the duties. Although the arguments of the Company should be considered flawed (as shown above), the later attitude of the Company requires the

assumption that the initial lack of cooperation with the data protection authority did not result from the bad will of persons holding managerial positions in the Company, nor did it intentionally obstruct the proceedings. In response to the information about the initiation of administrative proceedings in the case with reference number [...], the President of the Management Board of the Company, in a letter of [...] August 2020, provided explanations allowing the President of the Personal Data Protection Office to continue the proceedings with reference number [...]. In addition, the explanations sent in its course, resulting from the further exchange of correspondence between the President of the Personal Data Protection Office and the Company - although concise and not fully satisfying the demands of the supervisory authority as to the scope of the disclosed data - contributed to establishing the factual circumstances necessary for the substantive resolution of the case. The active attitude of the Company indicates its readiness for further cooperation with the President of the Personal Data Protection Office. In the opinion of the supervisory body, the very initiation of the proceedings to impose an administrative fine and the real prospect of imposing a financial penalty have become a clear signal for the Company that further avoidance of the obligations imposed by the provisions of Regulation 2016/679 will inevitably lead to the application of the strictest sanctions provided for in these provisions.

In the opinion of the President of the Personal Data Protection Office, all the circumstances of the case, considered jointly, allow the conclusion that the lack of a substantive response to the requests of the President of the Personal Data Protection Office in the proceedings with reference number [...] was not intentional. In connection with the above, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, according to which each supervisory authority has the right to issue a reminder to the controller or processor in the event of violation of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office recognizes that it is justified to grant E. Sp. z o.o. admonitions in the scope of the infringement of the provisions of Art. 31 and art. 58 sec. 1 lit. a) and lit. e) Regulation 2016/679. The admissibility of replacing a financial penalty with a warning is also justified by recital 148 of Regulation 2016/679, which states that sanctions, including administrative fines, should be imposed "in order to make the enforcement of the provisions of this Regulation more effective". The President of the Personal Data Protection Office decided that in the case in question, in the light of the criteria set out in Art. 83 sec. 2 of Regulation 2016/679, it will be sufficient to issue a reminder. However, it should be noted that in the event of a similar event occurring in the future, each reminder issued by the President of the Personal Data Protection Office against the Company will be taken into account when assessing the premises for a possible administrative penalty, in accordance with the

principles set out in Art. 83 sec. 2 of the Regulation 2016/679.

In this factual and legal state, the President of the Personal Data Protection Office resolved, as in the operative part of this decision.

The decision is final. The party has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200.

In the proceedings before the Provincial Administrative Court, the party has the right to apply for the right of assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of a party submitted prior to the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

2021-07-21