

[doc. web n. 9678951]

Injunction order against the Municipality of Putifigari - April 29, 2021

Record of measures

n. 167 of 29 April 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / EC, "General Data Protection Regulation" (hereinafter "RGPD");

GIVEN the d. lgs. June 30, 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter the " Code ");

GIVEN the general provision n. 243 of 15/5/2014 containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities", published in the Official Gazette. n. 134 of 12/6/2014 and in www.gpdp.it, doc. web n. 3134436 (hereinafter "Guidelines on transparency");

GIVEN the Regulation n. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved by resolution no. 98 of 4/4/2019, published in the Official Gazette n. 106 of 8/5/2019 and in www.gpdp.it, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN the documentation in the deeds;

GIVEN the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and operation of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web n. 1098801;

Professor Ginevra Cerrina Feroni will be the speaker;

WHEREAS

1. Introduction

This Authority received a report, with which a violation of the legislation on the protection of personal data by the Municipality of Putifigari was complained.

Specifically, as emerged from the preliminary verification carried out by the Office, in the "Subsidies, contributions, subsidies, economic advantages" section of the "Transparent administration" section of the institutional website of the aforementioned Municipality, it was possible to view detailed information relating to the aforementioned deeds of concession.

In this regard, by filling in the appropriate search form, it was possible to view information concerning the provision of the Social Services no. XX del XX with clear indication, in addition to the name of the beneficiary (Mr. XX), the relative tax code, the subsidy received equal to € 234.08 and the "Title / Standard" of the payment, which reported the following justification " XX ".

The described personal information was present at the following url:

1) [http: // ...;](#)

2) [http: //](#)

2. The legislation on the protection of personal data

Pursuant to the relevant regulations, "personal data" is "any information concerning an identified or identifiable natural person (" interested ") and "the natural person who can be identified, directly or indirectly, with particular reference to a identifier such as the name, an identification number, location data, an online identifier or one or more characteristic elements of its physical, physiological, genetic, psychic, economic, cultural or social identity "(art. 4, par. 1 , No. 1, of the GDPR).

In this regard, public entities (such as the Municipality) may disclose "personal data" only if this operation is provided for "by a law or, in the cases provided for by law, by regulation" (Article 2-ter, paragraphs 1 and 3, of the Code), in compliance - in any case - with the principles of data protection, including that of "minimization", according to which personal data must be "adequate, relevant and limited to what is necessary in compliance to the purposes for which they are processed "(art. 5, par. 1, lett. c, of the RGPD).

The state legislation of the sector on transparency provides, with reference to the "obligations of publication of the deeds of granting grants, contributions, subsidies and attribution of economic advantages to individuals and public and private entities", that "Public administrations publish the deeds of granting of grants, contributions, subsidies and financial aids [...], and in any

case of economic advantages of any kind to persons [...] of an amount exceeding one thousand euros »during the calendar year. In any case, "The publication of the identification data of the natural persons recipients of the measures referred to in this article is excluded, if from such data it is possible to obtain information relating": "to the state of health" or "to the situation of economic and social hardship of the interested parties "(Article 26, paragraphs 2-4, of Legislative Decree no. 33 of 14/3/2013). Similarly, the Code also establishes that the dissemination of data relating to health is prohibited (Article 2-septies, paragraph 8), that is, "personal data relating to the physical or mental health of a natural person, including the provision of health care services , which reveal information relating to your state of health "(articles 4, par. 1, n. 15; 9, par. 1, 2 and 4, recital 35 of the GDPR).

It is also recalled that, since 2014, the Guarantor has highlighted that the data suitable for revealing the state of health are not only those relating to the indication of the disease, but concern any information "from which it can be inferred, even indirectly, the state of illness or the existence of pathologies of the subjects concerned, including any reference to the conditions of invalidity, disability or physical and / or mental handicap "(see provision no. 243 of 15/5/2014, containing the" Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities ", being updated but still substantially valid, published in the Official Gazette no. 134 of 12/6/2014 and in www.gdpd.it, web doc. N. 3134436, first part par. 2 and second part, par. 1; as well as provisions cited therein in note no. 5).

The same Guidelines indicate, with reference to the obligation to publish deeds of granting economic benefits (first part, par. 9.e), that "the same d. lgs. n. 33/2013 identifies a series of limits to the obligation to publish deeds of granting economic benefits, however named. In fact, the identification data of the natural persons recipients of the granting of grants, contributions, subsidies and allocation of economic advantages, as well as the lists of the relative recipients, cannot be published:

- a) for a total amount of less than one thousand euros during the calendar year in favor of the same beneficiary;
- b) of an amount exceeding one thousand euros during the calendar year in favor of the same beneficiary "if from such data it is possible to obtain information relating to the state of health" (Article 26, paragraph 4, Legislative Decree no. 33 / 2013; as well as [art. 2-septies], paragraph 8 [...] of the Code);
- c) of an amount exceeding one thousand euros during the calendar year in favor of the same beneficiary "if from such data it is

possible to obtain information relating [...] to the economic and social hardship of the interested parties" (Article 26, paragraph 4, Legislative Decree no. 33/2013)).

3. Preliminary assessments of the Office on the processing of personal data carried out.

In light of the checks carried out on the basis of the elements acquired and the facts that emerged as a result of the investigation, as well as subsequent assessments, the Office with note prot. n. XX of the XX has ascertained that the Municipality of Putifigari - by disseminating the data and personal information of the recipient of the economic benefit described above - has carried out a processing of personal data that does not comply with the relevant regulations on the protection of personal data contained in the RGPD . Therefore, with the same note the violations carried out (pursuant to art.166, paragraph 5, of the Code) were notified to the aforementioned Municipality, communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGPD and inviting the aforementioned administration to send to the Guarantor defensive writings or documents and, possibly, to ask to be heard by this Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as art.18, paragraph 1, of law no. 689 of 11/24/1981).

4. Defensive memories.

The Municipality of Putifigari, with the note prot. n. XX of the XX, sent to the Guarantor his defense writings in relation to the violations notified.

In this regard, please note that, unless the fact constitutes a more serious crime, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable pursuant to art. 168 of the Code, entitled "False statements to the Guarantor and interruption of the performance of the tasks or the exercise of the powers of the Guarantor".

Specifically, it was represented, among other things, that:

- "First of all, this administration admits that the publication in the transparent administration section of the Body of the name of Mr. XX, of his tax code and the amount of the commitment for the month of March 2019 as a subsidy for personalized plans of support for people with severe disabilities, pursuant to law 162/1998 program 2018 indirect management 2019 ";
- "This represents a clear violation of the ban on the dissemination of health-related data as it is indirectly inferred that the aforementioned is handicapped, in contrast with art. 2-septies paragraph 8 of Legislative Decree 196/2003 and art. 26 paragraph 4 of Legislative Decree 33/2013, as well as the basic principles of the processing referred to in art. 5 par. 1 letter a)

and c) and art. 9 para. 1, 2 and 4 of the U.E. Reg. 679/2016, as the Guarantor Authority rightly contested in the provision notified last XX ";

- "Instead, with reference to the further dispute relating to the absence of the legal basis for the publication of the deeds of granting subsidies and attribution of economic advantages to private individuals pursuant to art. 26 paragraphs 2 -4 of Legislative Decree 33/2013, with specific reference to the assumption that the amount was less than one thousand euros during the calendar year, it should be noted that Mr. XX in 2019 benefited from the subsidies of this Municipality for a total amount of € 3,722.19 [...] ";

- "on XX the operator proceeded to publish the commitments carried out without deflating the box relating to the publication of the name of that single beneficiary Mr. XX [...], while he had correctly deflated the boxes relating to the publication of the names of the other 29 beneficiaries ";

- "Due to this material error, the payment of an economic benefit for the causal one has emerged in favor of a user identified by the management system with name, surname and tax code";

- "This information, unfortunately indirectly linked to a health situation, was therefore not intended to be disclosed to third parties, much less through online dissemination";

- "The data relating to the [interested party] were removed already on the 20th, following the notification of the violation by the Authority, as only on that occasion it was possible to learn of the error resulting from the violation to protect personal data";

- "with reference to the alleged violation of art. 26 of Legislative Decree 33/2013, for the part that does not provide for the publication of the identification data of the beneficiary of economic benefits of amounts less than one thousand euros in the calendar year, it is respectfully noted that there would be no violation of art. 2 ter paragraphs 1 and 3 of Legislative Decree 196/2003 as well as the basic principles of the treatment referred to in art. 5, par. 1, lett. a) and c); art. 6 par. 1, letter c) and e), par. 2) and par. 3, lett. b) of the EU Reg. 679/2016, as the subject in question in that calendar year has far exceeded the amount of one thousand euros ";

- "Even the behavior of the operator, who has taken steps to obscure the names of all the beneficiaries except one, denotes the awareness of the need to obscure personal data because its dissemination is prohibited and makes it clear that it was a mere error material when activating the command on the supplied management software, erring where, unintentionally, the name of Mr. XX has been made visible in that single engagement ";

- "It is clear that a repetitive operation, in conditions of high workloads for a single operator, can easily cause a distraction of the same and not even consist of real negligence";
- "In addition to the immediate removal from the Transparent Administration section in the" subsidies, contributions, subsidies, economic benefits "area of the website of the Municipality of Putifigari, the XX of the contents concerning the Determination of Social Services no. XX of the XX, the Municipality asked the company providing the management to verify if it was possible to put in place appropriate technical measures that prevented the repetition of this content from other websites, in order to mitigate the consequences of dissemination. The company took action and ruled out that the contents had been resumed [...] »;
- "Furthermore, as a precaution, the Entity asked the [IT company] to verify the presence of any similar contents relating to other subjects on the site, to report them to the offices and to provide for the urgent and immediate adoption of the same procedures indicated for the data of Mr. XX ";
- "Again, the same XX the Entity also asked all the Offices to provide, as a matter of urgency, a verification and reconnaissance of the data published in the section" transparent administration "in the area" grants, contributions, subsidies, economic benefits " of the website of the Municipality of Putifigari of personal data pursuant to art. 9 and personal data relating to convictions and crimes referred to in art. 10 of EU Regulation 2016/679, in light of the guidelines of the Data Protection Authority for the processing of personal data on the websites of the PA [...] »;
- "The Entity has also preliminarily checked with the DPO if any requests by the interested party had escaped, ascertaining that nothing had been received either from the same or from third parties in terms of reports on the incident";
- "All the staff of the Municipality of Putifigari on the XXth participated in the training event on the subject of the relationship between privacy, transparency and advertising planned by the DPO since the XXth [...] and held by them for all the Bodies that are part of the 'Union of Municipalities of Coros, whose contents and results have been communicated via PEC by the DPO to the Union and to the Municipalities [...] »;
- "the management software used by the offices provided by the [IT company], which also takes care of its management and maintenance including technical training for the people who use it, allows the obscuring of personal data by default with a view to respecting privacy by design and by default, [...] but also by the safety specifications sent to the Entity [...] »;
- "Furthermore, at the request of the DPO, after the notification of the violation, among others, the verification of the

functionality of the software and the circumstances of the event was ordered and consequently an improvement modification to the manufacturer was requested on the XXth [...]. This improvement change consists in the omission of the beneficiary and other information by default, so that the operator must specifically tick the box if he wants to publish or make the content visible and not limit himself to deflating, as is currently the case. This would have a double advantage: on the one hand, it would allow the operator to improve the attention of the operator who must perform a positive operation of loading the content, on the other hand, even if a new distraction should occur on the part of the same, in the limit it would not be published the desired content, without prejudice to the right to confidentiality of the interested parties ";

- "The insertion in the two URLs was caused by a mere material error of the operator who did not click on the software, for that user only, the data omission button";

- «It should be noted that the municipality of Putifigari is a small town in the province of Sassari with a resident population of about 700 people and has only n. 5 employees, who are assigned numerous tasks and functions with important and often excessive workloads. This can be the cause of absolutely unwanted inattention ».

5. Outcome of the investigation relating to the complaint presented

The issue that is the subject of the case brought to the attention of the Guarantor concerns the publication of personal data and information of a recipient of an economic subsidy in the context of "Personalized support plans for people with severe disabilities", with consequent dissemination of the relative health data regarding your disability status.

In this regard, it is acknowledged, accepting the objection raised by the Municipality in the defense briefs supported by appropriate documentation, that the economic benefit granted to the interested party was for an amount exceeding one thousand euros in the calendar year, thus eliminating the objection made by the Office to the body in relation to the violation of art. 26, paragraph 2, of the d. lgs. 33/2013.

Nonetheless, in the context of the investigation opened by this Authority, the online disclosure of personal data on the health of the person concerned was still confirmed, even in the defense briefs. From this point of view, in fact, even the body has admitted that the dissemination of the complainant's online data was the result of "a mere material error of the operator who did not click on the software, for that user only, the data omission button ".

In this context, the circumstances highlighted in the defense writings examined as a whole, certainly worthy of consideration for the purpose of evaluating the conduct, are not, however, sufficient to allow the total archiving of this proceeding, since none of

the hypotheses provided for by art. 11 of the Guarantor Regulation n. 1/2019. This also considering that since 2014 the Authority, in the Guidelines on transparency and online publication mentioned above, has provided all pp.aa. specific indications on how to reconcile the transparency and publicity obligations of the administrative action with the right to the protection of the personal data of the interested parties.

For this reason, while accepting the exception of the Municipality in relation to art. 26, paragraph 2, of the d. lgs. 33/2013, the other preliminary assessments of the Office contained in the note prot. n. XX of the XX and the unlawfulness of the processing of personal data carried out by the Municipality of Putifigari is noted, as having reported on the web pages indicated above the name of the interested party and the circumstance that the economic contribution was paid on the basis of "Personalized support plans for people with severe disabilities, pursuant to Law 162/98" caused the dissemination of personal data relating to his health, in violation of art. 2-septies, paragraph 8, of the Code and art. 26, paragraph 4, of the d. lgs. 33/2013; as well as the basic principles of the processing referred to in art. 5, par. 1, lett. a) and c); 9, para. 1, 2 and 4 of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller has declared that he has obscured the personal data of the complainant disseminated online, without prejudice to what will be said on the application of the pecuniary administrative sanction, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

6. Adoption of the injunction order for the application of the pecuniary administrative sanction (Articles 58, paragraph 2, letter i; 83 of the GDPR)

The Municipality of Putifigari appears to have violated Articles 5, par. 1, lett. a) and c); 9, para. 1, 2 and 4, of the RGPD, as well as art. 2-septies, paragraph 8, of the Code and art. 26, paragraph 4, of the d. lgs. 33/2013.

In this regard, art. 83, par. 3, of the RGPD, provides that «If, in relation to the same treatment or related treatments, a data controller or a data processor violates various provisions of this regulation, with willful misconduct or negligence, the total amount of the pecuniary administrative sanction does not exceeds the amount specified for the most serious violation '.

In the present case, the violation of the aforementioned provisions - also considering the reference contained in art. 166, paragraph 2, of the Code - is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the GDPR, which therefore applies to the present case.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGPD, as well as art. 166 of the Code, has the corrective power to "inflict a pecuniary administrative sanction pursuant to Article 83, in addition to the [other] [corrective] measures referred to

in this paragraph, or instead of such measures, depending on the circumstances of every single case ". In this context, "the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount, taking into account the elements provided for by art. 83, par. 2, of the GDPR.

In this sense, the detected conduct in violation of the regulations on the protection of personal data is of a negligent nature and linked to an isolated event caused by a mere material error. The processing has in any case had as its object the online dissemination of personal data, for more than a year and a half, of health data (Article 9, RGPD), referring to a single interested party. The Municipality of Putifigari is however a small body (just over 700 inhabitants) with only 5 employees, who - according to the Municipality - "are assigned numerous tasks and functions with important and often excessive workloads [which] it can be the cause of absolutely unwanted inattention ». Following the request of the Office, the administration intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to remedy the violation, mitigating its possible negative effects. In the reply to the Guarantor, various technical and organizational measures implemented pursuant to art. 25-32 of the RGPD and, in any case, there are no relevant previous violations of the RGPD committed by the entity.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGPD, to the extent of € 3,000.00 (three thousand) for the violation of Articles 5, par. 1, lett. a) and c); 9, para. 1, 2 and 4, of the RGPD, as well as art. 2-septies, paragraph 8, of the Code and art. 26, paragraph 4, of the d. lgs. 33/2013; as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same RGPD.

In relation to the specific circumstances of this case, relating to the online dissemination of health data (Article 9, RGPD), it is also believed that the ancillary sanction of the publication of this provision on the Guarantor's website, provided for by art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the processing carried out by the Municipality of Putifigari in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Municipality of Putifigari, in the person of the pro-tempore legal representative, with registered office in Piazza Boyl n. 9 - 07040 Putifigari (SS) - Tax Code 00253840904 to pay the sum of € 3,000.00 (three thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

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to the same Municipality to pay the sum of € 3,000.00 (three thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981.

Please note that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within the term set out in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

HAS

- the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;
- the annotation in the internal register of the Authority of the violations and measures adopted pursuant to art. 58, par. 2, of the RGPD with this provision, as required by art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the RGPD, of the arts. 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, April 29, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feroni

THE SECRETARY GENERAL

Mattei