

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 13

January

2022

## DECISION

DKE.561.10.2021

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, 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. 58 sec. 1 lit. a) and lit. e) and art. 58 sec. 2 lit. b) Regulation of the European Parliament 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 changes announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2, and in the Official Journal of the European Union L 74 of 04.03. 2021, p. 35), after conducting the administrative procedure to impose an administrative fine on Ms B. Ž. running a business under the name of [...], President of the Office for Personal Data Protection,

reminds Mrs. B. Ž., running a business under the name of [...], for violating the provisions of Art. 58 sec. 1 lit. a) and lit. e) Regulation of the European Parliament 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 changes announced in the Journal of Laws UE L 127 of 23/05/2018, page 2, and in the Journal of Laws of the European Union L 74 of 04/03/2021, page 35), consisting in failure to provide the President of the Office for Personal Data Protection with access to data personal data and information necessary for the performance of its tasks.

### Justification

The Office for Personal Data Protection received a complaint from Ms M. S. (hereinafter referred to as "the Complainant") about irregularities in the processing of her personal data by Ms B. Ž. running a business under the name of [...] (hereinafter referred to as: "the Entrepreneur") consisting in failure to exercise the complainant's right under Art. 15 sec. 3 GDPR, i.e.

failure to provide a copy of the complainant's personal data recorded in the customer's card, consent to the treatment, complaints and three receipts.

In view of the need to obtain additional information necessary to assess the circumstances related to the probable breach of personal data protection, the President of the Personal Data Protection Office (hereinafter also: "President of the Personal Data Protection Office"), under the initiated administrative procedure with the reference number [...], addressed the Entrepreneur in a letter from [...] February 2021 to comment - within 7 days from the date of delivery of the said correspondence - to the content of the complaint and to provide detailed explanations:

- 1) whether, and if so, on what legal basis, for what purpose, the Entrepreneur processes the complainant's personal data;
- 2) whether the Complainant asked the Entrepreneur to exercise her right under Art. 15 sec. 3 GDPR by providing a copy of the personal data subject to processing by the Entrepreneur contained in the customer card, consent to the treatment, complaints and three receipts, if so, how the Entrepreneur responded to these requests (sending a copy of any correspondence).

The aforementioned letter, sent via the Polish postal operator to the address of the Entrepreneur's permanent place of business, disclosed in the Central Register and Information on Economic Activity (CEIDG), was not collected by him. Double advised on [...] February 2021 and [...] March 2021, and then marked "RETURN not accepted on time", was returned on [...] March 2021 to the Office for Personal Data Protection.

In view of the above, the President of the Personal Data Protection Office (UODO) again, in a letter of [...] March 2021, asked the Entrepreneur to submit appropriate explanations, setting a 7-day deadline for responding to such a request. At the same time, the Entrepreneur was informed that failure to provide an exhaustive answer to the summons may result in the imposition of an administrative fine referred to in Art. 83 sec. 5 lit. e) Regulation 2016/679. The above-mentioned letter, twice notified on [...] April 2021. and [...] April 2021, not collected by the recipient on time, was returned to the sender [...] May 2021.

Bearing in mind the current wording of Art. 44 § 4 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended), hereinafter referred to as "k.p.a.", both of the above-mentioned the letters were considered correctly delivered to the Entrepreneur.

Due to the failure by the Entrepreneur to provide the information necessary to resolve the case with the reference number [...], the President of the Personal Data Protection Office initiated against him ex officio - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679 - administrative proceedings to impose an administrative fine in connection with the violation of Art. 58 sec. 1 lit. a)

and e) of Regulation 2016/679. The Entrepreneur was informed about the initiation of the procedure by letter of [...] June 2021.

This correspondence, addressed to the Entrepreneur via Poczta Polska, was received by him on [...] June 2021.

In response to the letter informing about the initiation of administrative proceedings No. The President of the Personal Data Protection Office (UODO) within the period originally set by the data protection authority. The entrepreneur stated that the lack of receipt of the correspondence resulted from the limitations of conducting business activity in 2021, difficulties with movement, personal and health situation. Moreover, the correspondence was sent to an inaccurately described address. The number of the apartment was missing from the recipient's address, which could mean that the advice was not delivered. The entrepreneur informed about the update of the correspondence address by making an appropriate entry in the CEIDG.

Due to the above, the Entrepreneur was not aware that administrative proceedings were pending against him before the President of the Personal Data Protection Office regarding a breach of personal data protection, in which he is called to provide information necessary to investigate the circumstances related to the incident reported to the supervisory authority.

The Entrepreneur did not receive the first information about the proceedings conducted by the President of UODO until [...] June 2021, when he received the letter on the initiation of proceedings on imposing an administrative fine on the Entrepreneur.

Bearing in mind that the Entrepreneur's omission was not deliberate, but only resulted from his negligence - as such should be considered the lack of clarification of the address for delivery in CEIDG - as well as the fact of submitting the explanations required from the Entrepreneur immediately after obtaining information about pending proceedings against him and the submission of a tax return for 2020, the Entrepreneur applied for a waiver of the financial sanction, declaring a willingness to continue cooperation with the President of the Personal Data Protection Office as part of the performance of his tasks.

Having read all 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 powers, the President of the Personal Data Protection Office is entitled, inter alia, to conduct proceedings on the application of the provisions of the legal act in question (Article 57 (1) (h)), including proceedings related to the assessment of personal data breaches, reported to the President of the Personal Data Protection Office by administrators pursuant to Art. 33 of the Regulation 2016/679. In order to enable the performance of such defined tasks, the President of the

Personal Data Protection Office is entitled to a number of tasks 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)). 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, is subject to - 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.

In addition, the President of the Personal Data Protection Office is entitled to a number of provisions specified in Art. 58 sec. 2 remedial powers, including reminders to the administrator or processor in the event of violation of the provisions of Regulation 2016/679 by processing operations. The President of the Personal Data Protection Office, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, it may consider it justified to provide the administrator with a reminder in the scope of the infringement of the provisions of art. 58 sec. 1 lit. a) and e) of Regulation 2016/679. Pursuant to recital 148 of Regulation 2016/679, in order to make the enforcement of the Regulation more effective, sanctions, including administrative fines, should be imposed for its infringement, in addition to or instead of the relevant 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 actions taken by the controller to minimize the harm, the degree of liability or any prior breach, and the way in which the supervisory authority became aware of a breach, compliance with the measures imposed on the controller or processor, compliance with codes of conduct and any other aggravating or mitigating factors.

Referring to the above-mentioned provisions of the Regulation 2016/679 to the facts established in this case, it should be stated that the Entrepreneur, as a party to the proceedings with reference number [...], breached the obligation to provide the President of the Personal Data Protection Office with the and personal data necessary for the performance of its tasks, resulting from art. 58 sec. 1. lit. a) and lit. e) Regulation 2016/679. In this case, the information important for the further course of the proceedings was to determine on what legal basis and for what purpose the Entrepreneur processes the complainant's

personal data, or whether the complainant asked the Entrepreneur to exercise her right under Art. 15 sec. 3 GDPR by providing a copy of the personal data subject to processing by the Entrepreneur contained in the customer card, consent to the treatment, complaints, three receipts and how the Entrepreneur responded to these requests.

Preventing access to information requested by the President of the Personal Data Protection Office from the Entrepreneur, prevented a thorough examination of the case and resulted in the prolongation of the proceedings, which, in turn, was contrary to the basic rules governing administrative proceedings - specified in Art. 12 sec. 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 745, as amended), the principles of insight and speed of proceedings. President of the Personal Data Protection Office, in order to establish the facts of the case with reference number [...] twice requested the Entrepreneur to send explanations. None of the letters sent to the Entrepreneur, dated [...] February 2021 and [...] March 2021, addressed to the address of the Entrepreneur's permanent place of business activity disclosed in CEIDG, was received by him despite the double notification. In connection with the above, these letters were considered correctly delivered to the Entrepreneur in accordance with Art. 44 § 4 of the Code of Civil Procedure. As a result of the above, it was necessary to initiate these proceedings to impose an administrative fine, as a result of which the Entrepreneur started cooperation with the President of the Personal Data Protection Office by sending detailed explanations in the proceedings with the reference number [...], which allowed the President of the Personal Data Protection Office to continue the activities in the above-mentioned case. Taking into account the above findings, there is no doubt that the Entrepreneur in his behavior violated the provisions of Regulation 2016/679. The justification provided by the Entrepreneur for the lack of response to the requests of the President of the Personal Data Protection Office does not remove the responsibility for the identified omission. At the same time, however, the reasons for the initial lack of cooperation with the supervisory authority indicated by the Entrepreneur should be considered as reliable and having a significant impact on the assessment of the Entrepreneur's behavior in the context of the selection of the sanction applied to him in these proceedings. In the opinion of the President of the Personal Data Protection Office, the Entrepreneur's failure to respond to the requests for explanations was due to the Entrepreneur's negligence, which reduced to the imprecise definition of the correspondence address in the CEIDG, as well as his difficult personal and health situation, which in fact contributed to the effective contact with the Entrepreneur. in order to clarify the essence of the matter.

In the present state of affairs, apart from the lack of response to requests for explanations, which was supplemented by the

Entrepreneur as a result of the initiation of this proceeding - no other indications were found indicating the Entrepreneur's lack of will to cooperate with the President of the Personal Data Protection Office. The circumstances of the case, and in particular the Entrepreneur's subsequent attitude, allow the conclusion that his initial sluggishness was not due to bad will, nor was it intended to deliberately obstruct the proceedings. On the contrary - the subsequent, active attitude of the Entrepreneur indicates the 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 procedure to impose an administrative fine and the real prospect of imposing a financial penalty have become a clear signal for the Entrepreneur that further evasion 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. At this point, in order to avoid similar situations in the future, the President of the Personal Data Protection Office also indicates that the Entrepreneur should immediately inform about any obstacles preventing the Entrepreneur from timely fulfillment of his obligations towards the personal data protection authority, as soon as they arise.

Bearing in mind 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 a breach of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office found it justified to provide the Entrepreneur with a reminder in the scope of the breach found art. 58 sec. 1 lit. a) and lit. e) Regulation 2016/679, assuming that in the light of the criteria set out in Art. 83 sec. 2 of Regulation 2016/679, it will be effective and sufficient. It should be noted, however, 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 Entrepreneur 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 sentence.

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.

2022-01-25