

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

of December

2020

DECISION

DKE.561.17.2020

Based on Article. 104 § 1 of the Act of 14 June 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 and art. 58 sec. 1 lit. e) in connection with 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 regulations) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings on the processing of personal data by Mr. TP, running a business under the name of T., President of the Office for Personal Data Protection,

reminds Mr. T. P. who runs a business under the name of T. for violating the provisions of Art. 31 and art. 58 sec. 1 lit. e) Regulation 2016/679 of the European Parliament and of the Council 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 regulation on data protection) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), hereinafter referred to as "Regulation 2016/679", consisting in the lack of cooperation with the President of the Personal Data Protection Office as part of the tasks and failure to provide information necessary for the President of the Personal Data Protection Office to perform his tasks.

Justification

The Office for Personal Data Protection received a complaint from Ms J. B. (hereinafter referred to as "the Complainant") about irregularities in the processing of her personal data by Mr. T. P. running a business under the name of T., hereinafter also referred to as the "Entrepreneur". The President of the Personal Data Protection Office (hereinafter "the President of the Personal Data Protection Office"), as part of the administrative procedure initiated to consider the complaint (reference number

[...]), in a letter of [...] March 2019, asked the Entrepreneur to comment on the content of the complaint and to answer the following specific questions about the case:

- 1) when (please indicate the exact date), from what source, on what legal basis (please indicate a specific legal provision / s) the Entrepreneur obtained the complainant's personal data;
- 2) whether, and if so, on what legal basis the Entrepreneur is currently processing the complainant's personal data, as well as on what legal basis, for what purpose and for when the data will be processed;
- 3) whether the Complainant requested the Entrepreneur to remove her personal data from the Entrepreneur's systems, and if so, how the Entrepreneur responded to this request and what information he provided to the Complainant.

This letter was delivered to the Entrepreneur on [...] April 2019, which was confirmed on the "Confirmation of receipt of the letter-post item". The entrepreneur did not reply to this letter. Therefore, on [...] July 2019, a letter was sent to the Entrepreneur again with a summons to immediately provide explanations on the matter. The letter was delivered on [...] July 2019, which was confirmed on the "Confirmation of receipt of the letter-post item". The Entrepreneur did not reply to this letter either. Therefore, on [...] January 2020, another letter was sent to the Entrepreneur with a renewed call for immediate explanations on the matter. This letter was delivered on [...] February 2020, which was confirmed on the "Confirmation of receipt of the letter-post item". The entrepreneur did not reply to this letter either. In a letter of [...] August 2020, the entrepreneur was instructed that failure to respond to the calls of the President of the Personal Data Protection Office may result - in accordance with Art. 83 sec. 5 lit. e) in connection with joke. 58 sec. 1 lit. e) Regulation 2016/679 - imposing an administrative fine on the Entrepreneur.

Due to the failure by the Entrepreneur to provide the information necessary to settle the case with reference number [...], initiated by the complainant's complaint, the President of the Personal Data Protection Office (UODO) initiated ex officio against the Entrepreneur - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679, due to the breach by the Entrepreneur of art. 31 and art. 58 sec. 1 letter e) of the Regulation 2016/679 - administrative proceedings to impose an administrative fine on the Entrepreneur (reference number DKE.560.17.2020 [...]. October 2020, which was properly served on [...] November 2020. This letter also summoned the Entrepreneur - in order to determine the basis for the penalty, pursuant to Article 101a (1) of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) - to present the financial statements on the activities conducted by the Entrepreneur for 2019 or in the absence of such statements - a statement on the amount of

turnover and the financial result achieved by the Entrepreneur in 2019. In the above-mentioned letter The entrepreneur was also informed that if he provided exhaustive explanations in the proceedings with reference number [...], to be provided by the President of the UO DO and justify the previous lack of response to these summons, this circumstance in the proceedings with reference number DKE.561.17.2020 [...] may have a mitigating effect on the amount of the administrative fine or may result in waiving its imposition.

In response to the letter informing about the initiation of the procedure to impose an administrative fine on the Entrepreneur, by a letter of [...] December 2020, the Entrepreneur's attorney provided explanations that allowed the President of the Personal Data Protection Office to conduct further proceedings in the case no. [...].

In addition, in a letter of [...] December 2020, the Entrepreneur also explained that:

The entrepreneur runs [...] as part of his business activity. The applicant was not a member of [...]. She used the trial training once. In accordance with the procedure applicable in such a case, the complainant was obliged to complete the application form on the use of a trial training, in which it was necessary to provide personal data and submit a declaration of health.

After the training, the complainant demanded that the application form be returned or destroyed. Thus, in her presence, this form was destroyed in a document shredder. As indicated by the Entrepreneur, the Complainant seemed to be satisfied with such action, thus the Entrepreneur was extremely surprised by the news that the Complainant had lodged a complaint with the Personal Data Protection Office.

As the justification for the lack of cooperation with the President of UODO, the Entrepreneur indicated that in the period from April 2019 to October 2020 he was often on sick leave due to illness and numerous injuries. In addition, due to the COVID-19 epidemic, it was closed between March 2019 and October 2020 [...]. Above the circumstances prevented him from participating in the activities related to the applicant's case.

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 all 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) is subject - in accordance with art. 83 section 5 letter 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 applicable . On the other hand, violation of the provisions of Regulation 2016/679, consisting in the lack of will to cooperate with the supervisory body in the performance of its tasks (Article 31), and is subject - in accordance with art. 83 sec. 4 lit. a) Regulation 2016/679 - an administrative fine of up to EUR 10,000,000, and in the case of a company - up to 2% of its total annual worldwide turnover from the previous financial year, with the higher amount being applicable.

The President of the Personal Data Protection Office, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679 may also consider it justified to provide the Entrepreneur with a reminder in the scope of the infringement of the provision of Art. 31 in connection with Art. 58 sec. 1 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 and described at the beginning of the justification for this decision, it should be stated that the Entrepreneur - the administrator of the complainant's personal data, Ms J.B. - as a party to the proceedings conducted by the President of the Personal Data Protection Office with reference number [...] undoubtedly breached the obligation to provide the President of the Personal Data Protection Office with access to information necessary for the performance of his tasks - in this case, to the substantive resolution of the case. However, in response to the information on the initiation of administrative proceedings in the case No. DKE.561.17.2020 [...], the Entrepreneur's attorney in a letter of [...] December 2020, provided explanations allowing the President of the Personal Data Protection Office to conduct further proceedings in the case No. [...].

When deciding to impose sanctions on the Company in this case, the President of the Personal Data Protection Office took into account the following circumstances affecting the assessment of the violation:

1. Nature, gravity and duration of the infringement (Article 83 (2) (a) of Regulation 2016/679).

The breach sanctioned in the present case undermines the system intended to protect one of the fundamental rights of an individual, which is the right to the protection of his personal data, or more broadly, to the protection of his privacy. An important element of this system, the framework of which is set out in Regulation 2016/679, are supervisory authorities with tasks related to the protection and enforcement of the rights of natural persons in this respect. In order to enable the performance of these tasks, supervisory authorities have been equipped with a number of control powers, powers to conduct administrative proceedings and remedial powers. On the other hand, administrators and processors have been imposed specific obligations, correlated with the powers of supervisory authorities, including the obligation to cooperate with supervisory authorities and the obligation to provide these authorities with access to personal data and other information necessary to perform their tasks.

In the opinion of the President of the Personal Data Protection Office, the Entrepreneur's actions certainly resulted in a short-term lack of access to evidence indicating the legality and lawfulness of the Entrepreneur's processing of the complainant's personal data.

2. Intentional or unintentional nature of the breach (Article 83 (2) (b) of Regulation 2016/679).

The Article 29 Working Party in the Guidelines on the application and setting of administrative fines for the purposes of Regulation 2016/679 adopted on 3 October 2017 with reference to the intentional or unintentional nature of an infringement indicated that, in principle, "intention" encompasses both knowledge and intent. due to the characteristics of a prohibited act, while "inadvertent" means no intention to cause an infringement, despite the controller or processor's failure to fulfill the legally required duty of care. Intentional violations are more serious than unintentional violations and, consequently, more often involve the imposition of an administrative fine.

In the opinion of the President of the Personal Data Protection Office, the above-mentioned the breach was unintentional, one can speak of negligence. On the part of the Company, there was a will to cooperate in providing the authority with all information (evidence) necessary to continue the proceedings under reference number [...].

3. The degree of cooperation with the supervisory authority in order to remove the breach and mitigate its possible negative effects (Article 83 (2) (f) of Regulation 2016/679).

In the course of these proceedings, the Entrepreneur expressed his willingness to cooperate with the President of the Personal Data Protection Office in order to remove the violation consisting in particular in providing explanations in the scope in which the conduct of the proceedings with reference number [...], justifying the lack of this cooperation with the state of health and the difficult epidemic situation in the country.

The other conditions set out in Art. 83 sec. 2 of Regulation 2016/679 did not affect (aggravating or mitigating) the assessment of the infringement made by the President of the Personal Data Protection Office (including: any relevant prior infringements by the controller, the manner in which the supervisory authority learned about the infringement, compliance with the measures previously applied in the same case , the use of approved codes of conduct or approved certification mechanisms) or, due to the specific nature of the breach (relating to the controller's relationship with the supervisory authority and not the controller's relationship with the data subject), could not be taken into account in the present case (in including: the number of injured persons and the extent of the damage suffered by them, actions taken by the administrator to minimize the damage suffered by data subjects, the degree of administrator's liability, taking into account the technical and organizational measures implemented by him, categories of personal data affected by the infringement zenie).

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 case of violation of the provisions of

this Regulation by processing operations, the President of the Personal Data Protection Office deems it justified to provide the Entrepreneur with a reminder regarding the breach of the provision. art. 31 in connection with Art. 58 sec. 1 lit. e) Regulation 2016/679.

The President of the Personal Data Protection Office decided that in this case, in the light of the criteria specified in Art. 83 sec. 2 GDPR, will be sufficient and at least as “effective, proportionate and dissuasive” as imposing a fine (see Art. 83 (1) GDPR). It should also 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.

2021-02-05