

[doc. web n. 9704032]

Order injunction against the Provincial Order of Rome of Physicians and Dentists - September 16, 2021

Record of measures

n. 320 of 16 September 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 dr. Claudio Filippi, Deputy Secretary General;

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 / CE, "General Data Protection Regulation" (hereinafter, "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to the processing of personal data, as well as to the free circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

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](http://www.gpdp.it), doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

Having seen 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 functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Speaker prof. Pasquale Stanzione;

## WHEREAS

### 1. The complaint.

With a complaint from the XX, Mr. XX represented that he had exercised "XX [...] the rights referred to in Articles from 15 to 22 of the Regulations [...] [towards the] Provincial Order of Physicians and Dentists in Rome (hereinafter, the "Order") [, not

having, however,] received any response ".

In particular, with an e-mail dated the XXth, the interested party had asked the Order to obtain "confirmation as to whether or not personal data concerning him and his [his] daughters [minors] [...] are being processed [, as well as] in case of confirmation, [...] access to such data, a copy of the same, and all the information provided for in letters a) to h) of art. 15, paragraph 1, of Regulation (EU) 2016/679 ".

## 2. The preliminary activity.

With a note of the XX (prot. N. XX), the Guarantor has invited the Order to adhere to the request to exercise the rights of the interested party no later than twenty days from the date of the same note, proceeding to inform the same and the Authority over the decisions adopted.

With a note of the twentieth, the Order stated, in particular, that:

"[...] all the personal data of the [complainant] and his daughters in possession of the [Order] have been [i] provided [i] by the same with [...] various complaints [presented to doctors enrolled in the Order] ] and are functionally processed by the [Order] to those notified by the same [, it being] clear that any personal data subject to processing by the Order [...] was provided by the instant [...] ";

"[...] The request of the [complainant] appears out of place, [taking the form of] an abusive exercise of the rights under the law [on data protection], both from a subjective, objective and functional point of view. The [complainant], in fact, not only was aware that the [Order] was in possession of his and his daughters' personal data, since he had provided the personal data himself, but that the [Order] itself was processing them precisely following your express requests / complaints for disciplinary proceedings ";

"It follows, therefore, that no obligation to reply, further than those already sent to the [complainant], existed and still exists [...] at the expense of [the Order] [...]";

"[...] since these are disciplinary proceedings not yet concluded, it is not possible to allow and / or issue copies of the documents forming part of the same, other than those delivered by the [complainant], since the same procedure is still in the preliminary phase [ ...] ";

"[Provided that] [...] the request [of the complainant] in addition to being formally generic (being constituted, with all evidence, by the mere enunciation of the abstract rights recognized by the GDPR to the interested party towards the data controller ) and

not anchored to any objective assumption, substantially it appears to have as its object the data spontaneously communicated by the applicant for the purposes referred to in its statement, the [Order] is, however, available, by making an appointment with the competent Offices , to allow the [complainant] access to such data ".

On the basis of the elements acquired, also through the documentation sent and the facts that emerged during the investigation, the Office notified the Order (prot.n. 'art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, concerning the alleged violation of articles 12, para. 1, 3, 4 and 5, and 15 of the Regulations, inviting the Order to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code, as well as art. 18, paragraph 1, of law no. 689 of 24 November 1981).

In its defense briefs, received with a note of the XX (acquired under prot. No. XX), the Order represented, in particular, that:

"On XX, the [complainant] sent [to] the Order two separate requests for information and access to documents. In particular, access to the documents pursuant to Law 241/1990 was requested, with a first instance (prot. No. XX of the XX) in order to view and copy all the documents relating to the files of no. 2 exhibits presented on the twentieth and twentieth, from the same instant against two members of the [...] Order. On the same day, the [complainant] forwarded a further request, (prot. No. XX of the XX), to exercise the rights regarding the protection of personal data (Articles 15 to 22 of the Regulation) [...] ";

"Specifically, the [complainant], in addition to reiterating the request for access to his personal data and those of his daughters, requested confirmation of any processing of the aforementioned personal data and, if so, to extract a copy of the same";

"With a note of the XX (prot. N. XX), the Order, in response to the first request for access to the documents ([...] pursuant to Law no. 241/1990), communicated to the [complainant] the possibility of exercise his right of access, by making an appointment, in order to view the documents and extract a copy [...] ";

"Consequently, [...] an appointment was set for the 20th day at the headquarters of the Order, but [the complainant], without justified reason, did not show up [...]";

"With a note of the twentieth, [the Order] [...] [, acknowledging the invitation of the Guarantor,] reaffirmed its willingness to allow access to the data at the same time as the documentary one, by making an appointment with the competent offices";

"With a note of the XX [the complainant] contested the aforementioned note, emphasizing the tardiness and incompleteness of the answer of the XX [...]";

the Order has "always demonstrated its willingness to collaborate and make effective the exercise of the right of access, side sensu understood, to personal data following the requests of the [complainant] [...] considering that the exhibition and / or delivery the documentation extracted following requests for access to documents can constitute an adequate means of compliance to correspond to the different and further request for access to data by the interested party ";

"[...] the Order [...] immediately responded to the first request received by the applicant (note of the XX, prot. No. XX); this circumstance appears decisive since the exercise of the right of access would have also involved the evasion of the second request (note of the XX, prot. no. XX), implicitly satisfied, albeit not by electronic means ";

"[...] the simultaneous receipt of two distinct (and ancestral) instances of the [complainant], only formally different but both relating to disciplinary proceedings against the health professionals reported by the same, [may] have led to a" misunderstanding "between the parties concerned ";

"With computer communication of the XX (prot. No. XX), the requested data and information were instantly provided, as requested by the Guarantor Authority";

"The alleged violation committed [by the Order], would in any case be attributable to negligent responsibility, as a consequence of the two requests made by the exponent on the same date, which misled the proceeding Administration";

"The failure to reply to the request of the interested party derives from the excessive amount of access requests, especially pursuant to art. 22 Law 241 of 1990 "(att. 8 to the note of the XX);

"No harmful consequences appear to be found in the person concerned, not even indirectly" (Annex 8 to the note of the XX).

### 3. Outcome of the preliminary investigation.

#### 3.1. The legislation on data protection.

Pursuant to art. 15, para. 1 and 3, of the Regulation, "the interested party has the right to obtain from the data controller confirmation as to whether or not personal data concerning him is being processed and, in this case, to obtain access to personal data and [to certain] information "indicated in the same article, and" the data controller [is required to provide] a copy of the personal data being processed ".

Art. 12, par. 3, of the Regulation provides that "the data controller [must provide] the data subject with information relating to the action taken regarding a request pursuant to articles 15 to 22 without undue delay and, in any case, at the latest within one month from receipt of the request ".

If the data subject's requests "are manifestly unfounded or excessive, in particular due to their repetitive nature, the data controller may [...] b) refuse to satisfy the request. The data controller is responsible for demonstrating the manifestly unfounded or excessive nature of the request "(Article 12, paragraph 5, of the Regulation).

In any case, if he does not comply with the request of the interested party, the data controller must inform "the interested party without delay, and at the latest within one month of receiving the request, of the reasons for the non-compliance and the possibility of proposing a complaint to a supervisory authority and to propose judicial appeal "(Article 12, paragraph 4, of the Regulation).

The holder is required to adopt "appropriate measures to provide the interested party with all [...] communications referred to in articles 15 to 22 [...]" (Article 12, par. 1, of the Regulation).

### 3.2 Failure to respond to the request to exercise the rights of the interested party.

In the present case, the Order did not give feedback, within the deadline provided for by art. 12, par. 3, of the Regulations, to the request for access to personal data, submitted by the interested party, pursuant to art. 15 of the Regulation, dated XX.

As for the feedback provided after the invitation, formulated by the Guarantor, to adhere to the requests of the interested party, it is noted that the Order did not however provide the data and information requested by the interested party. In the course of the investigation, the Order initially argued that the request of the interested party of the XX "appears out of place", "formally generic" and "not anchored to any objective presupposition", substantiating itself in "an abusive exercise of rights referred to in the aforementioned legislation, both from a subjective, objective and functional point of view ", given that" the only personal data of which the [Order] was aware are those communicated directly by the applicant in the complaints presented ", and that" since these are disciplinary proceedings not yet concluded, it is not possible to allow and / or issue copies of the documents forming part of the same, other than those delivered by the [complainant] "(note of XX).

In this regard, it is noted that the request made by the interested party cannot be considered "manifestly unfounded" (Article 12, paragraph 5, of the Regulation), given that the legislation on personal data does not require that the interested party must motivate your request to access data concerning him, as the right of access can also be exercised with regard to personal data that have been provided to the data controller directly by the interested party, being able to have, for example, an interest in verifying that their data are accurate and updated (see Article 5, paragraph 1, letter d) of the Regulation).

With regard to the circumstance that the Order was unable to provide additional data with respect to those provided by the

interested party, as the disciplinary proceedings in question have not yet been concluded, it is noted that the Order has not put forward any legal argument aimed at proving this circumstance, with particular regard to the existence of one of the cases provided for by the legislation on data protection in which a limitation on the exercise of the rights referred to in Articles 15-22 of the Regulations (see articles 15, par. 4, of the Regulations and article 2-undecies of the Code).

Nor, even less, could the request of the interested party be considered "manifestly [...] excessive [a], in particular due to [its] repetitive nature" (Article 12, paragraph 5, of the Regulation), given that the acts do not it appears that the interested party had submitted similar and repeated requests to the Order before the twentieth century.

Moreover, the interested party had requested not only access to their personal data but also to obtain the information referred to in art. 15, par. 1, of the Regulations, in relation to which, in any case, there are no impediments to the acceptance of the application. However, not even this information was provided either following the request of the interested party or by reason of the invitation formulated by the Authority.

The Order did not, however, inform the interested party without delay, and at the latest within one month of receipt of the request, of the reasons for the non-compliance (or the alleged manifestly unfounded or excessive nature of the request, as well as the reasons that would have prevented access to data during disciplinary proceedings) and the possibility to lodge a complaint with a supervisory authority, as well as to propose a judicial appeal, as required by art. 12, par. 4, of the Regulation. Following receipt of the administrative dispute, the Order partially rectified its defense, arguing that, having submitted a request for documentary access pursuant to l 7 August 1990, n. 241 on the same day on which he had presented the application to exercise the right of access pursuant to art. 15 of the Regulation, the delivery of the documentation extracted following the request for access to documents would have implicitly also entailed the satisfaction of the request for access to personal data. In this regard, it is noted, first of all, that it is not proven that the personal data relating to the interested party and their minor daughters, in possession of the Order, coincided entirely with those contained in the documents subject to the request for document access, given that the Order itself, during the investigation, declared, as mentioned above, to be in possession of data other than those provided by the interested party, with respect to which, in the opinion of the Order, the right of access could not be granted, being disciplinary proceedings still in progress.

In any case, even assuming that the personal data relating to the data subject and his / her daughters coincided entirely with those contained in the administrative documents subject to the request for document access, the Order would still have had to

separately check the request to exercise the right of access. to personal data within the terms provided for by the Regulations, confirming that he does not hold personal data other than those contained in the aforementioned documents and possibly already delivered to the interested party, as well as providing, in any case, the information referred to in art. 15, par. 1, of the Regulation.

In addition, during the investigation it emerged that the delivery of the documents subject to the request for document access did not take place, even if, according to the Order, due to a fact attributable to the instant. The Order would therefore have had to satisfy the separate request for access to personal data and information on processing, within the deadline set by the Regulation, evaluating, in this context, whether to provide personal data in a disaggregated manner or by showing a copy of the documentation in which they were incorporated. On the other hand, the Order recognized that the two requests of the interested party, presented on the same day, "misled the proceeding Administration" and that "the failure to reply to the interested party's request derives [also] from 'excessive amount of access requests, especially pursuant to art. 22 Law 241 of 1990'".

Moreover, also following the invitation of the Guarantor to adhere to the request for access of the interested party, the Order limited itself to making itself "available, upon appointment with the competent Offices, to allow the [complainant] access to such data ", In a manner that does not comply with the provisions of art. 12, par. 3, of the Regulation, pursuant to which "if the interested party [, as in the present case,] submits the request by electronic means, the information [must] be provided, where possible, by electronic means, unless otherwise indicated by the interested party "(art. 12, par. 3, of the Regulations). The Order has not, however, proved in any way the impossibility of being able to provide by electronic means what is requested by the interested party by e-mail, nor does it appear that the interested party had given a specific indication to this effect.

Lastly, with regard to the communication prot. n. XX of the XX (sub attachment 7 to the note of the XX), with which, in the opinion of the Order, "the data and information requested were provided immediately, as requested by the Guarantor Authority", it is noted that, contrary to what the Order maintains, with this note only the information referred to in art. 15, par. 1, of the Regulations, having, however, the Order in any case omitted to inform the interested party about the "existence of the right of the interested party to ask the data controller to rectify or delete personal data or limit the processing of personal data concerning him or to oppose their treatment "(letter e)) and the " right to lodge a complaint with a supervisory authority "(letter f)). Therefore, no proof has been provided that the Order has actually provided feedback to the interested party also with

regard to the request to obtain "a copy of the personal data being processed" (Article 15, par. 3, of the Regulation ).

In light of the foregoing considerations, from the documentation in the deeds and from the declarations made during the investigation, it appears that the Order did not provide a response - in the manner and within the times provided for by the legislation on data protection - to the request of the interested party. to exercise the right of access to personal data of their own and of their minor daughters, did not inform the interested party of the reasons for the non-compliance and of the possibility to lodge a complaint with a supervisory authority, as well as to propose judicial appeal, and, also to following the invitation formulated by the Guarantor, provided the interested party, however, in an incomplete manner, the information referred to in art. 15, par. 1, of the Regulation only on date XX, well beyond the deadline indicated by the Authority, having also not proved to have provided the interested party with a copy of the personal data relating to him and his minor daughters, having therefore acted in violation of articles 12 and 15 of the Regulation.

#### 4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the data controller during the investigation □ the truthfulness of which one may be called to respond pursuant to art. 168 of the Code, although worthy of consideration, do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of this proceeding, however, none of the cases provided for by the art. 11 of the Guarantor Regulation n. 1/2019. Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the Order, which acted in violation of Articles 12 and 15 of the Regulation.

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, of the Regulation, pursuant to art. 58, par. 2, lett. i) of the same Regulation.

#### 5. Corrective measures (art. 58, par. 2, letter c), of the Regulations).

Art. 58, par. 2, lett. c), of the Regulation provides that the Guarantor has the corrective powers to "order the data controller or the data processor to satisfy the requests of the interested party to exercise their rights deriving from the [...] regulation".

Taking note of what emerged during the investigation phase and taking into account the fact that the Order has neither proved that it has provided the interested party with a copy of the personal data subject to the access request nor has it presented reasons in fact or in law impeding the acceptance of the itself, it is necessary, pursuant to art. 12, para. 1 and 3, 15, para. 1 and 3, and 58, para. 2, lett. c), of the Regulations, to order the Order, if it has not already done so, to provide the interested



party, within thirty days from the notification of this provision, a copy of their personal data and their minor daughters, also providing the Guarantor , within the same term, pursuant to art. 58, par. 1, lett. a), of the Regulation and 157 of the Code, an adequately documented feedback on the initiatives undertaken in order to implement the order, or, alternatively, within the same term, pursuant to art. 12, para. 1 and 3, 15, 58, par. 1, lett. a), of the Regulation and 157 of the Code, to inform the Authority and the complainant, about the possible existence of reasons in fact or in law impeding the possibility of accepting this request, providing an adequately documented feedback.

It remains understood that it is up to the Order, as data controller, to verify the existence of the conditions provided for by law for the purpose of any acceptance (see, in particular, articles 12, par. 6, and 15, par. 4 , of the Regulation and 2-undecies of the Code, as well as, also taking into account the specific reference context, the rules governing the exercise of parental authority).

In the event that, on the other hand, the Order has already provided a response to the aforementioned request from the interested party, it is necessary to order the Order, pursuant to Articles 58, par. 1, lett. a), of the Regulation and 157 of the Code, to inform the Authority of this circumstance, providing, within the same period indicated above, adequately documented feedback.

6. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (articles 58, par. 2, lett. l and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary 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 each single case "and, 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).

In this regard, taking into account art. 83, par. 3, of the Regulations, the violation of the aforementioned provisions is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the Regulation.

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 Regulation.

In relation to the aforementioned elements, the period of time elapsed between the date on which the interested party exercised his rights (XX) and that on which the Order provided feedback, albeit late and partially, to the request of the interested in obtaining the information referred to in art. 15, par. 1, of the Regulation (XX). Furthermore, the insufficient degree of cooperation of the Order with the Authority was considered in order to remedy the violation and mitigate its possible negative effects, since the Order limited, within the term indicated by the Guarantor, to merely "available, upon appointment with the competent Offices, to allow the [complainant] access to such data".

On the other hand, it was taken into consideration that the Order, albeit belatedly and partially, provided a response to the interested party's request to obtain the information referred to in art. 15, par. 1, of the Regulation. There are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is considered to determine the amount of the financial penalty in the amount of 5,000.00 (five thousand) euros for the violation of Articles 12 and 15 of the Regulations, as a pecuniary administrative sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account that the Order found the request of the interested party only partially and with considerable delay, it is also believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is noted that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulations, declares unlawful the conduct held by the Provincial Order of Rome of Physicians and Dentists, consisting in the violation of Articles 12 and 15 of the Regulations, within the terms set out in the motivation;

ORDER

to the Rome Provincial Order of Surgeons and Dentists, in the person of the pro-tempore legal representative, with registered office in Via Giovanni Battista De Rossi, 9 - 00161 Rome (RM), Tax Code 02604980587, pursuant to art. 58, par. 2, lett. i), and 83, par. 5, of the Regulations, to pay the sum of € 5,000.00 (five thousand) as a pecuniary administrative sanction for the violations indicated in the motivation; it is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the

right to settle the dispute by paying, within thirty days, an amount equal to half of the sanction imposed;

## INJUNCES

to the aforementioned Order:

a) to pay the sum of € 5,000.00 (five thousand), in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, according to the methods indicated in the annex, within thirty 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;

b) pursuant to art. 12, para. 1 and 3, 15, para. 1 and 3, and 58, para. 2, lett. c), of the Regulations, to provide the interested party, if he has not already done so, after checking the existence of the conditions provided for by law, within thirty days of notification of this provision, a copy of the personal data of the complainant and of his / her daughters minors, also providing the Guarantor, within the same term, pursuant to art. 58, par. 1, lett. a), of the Regulations and 157 of the Code, an adequately documented feedback on the initiatives undertaken in order to implement the order;

c) alternatively, within the same term as in the previous letter. b), pursuant to art. 12, par. 3, 15, 58, par. 1, lett. a), of the Regulation and 157 of the Code, to inform the Authority and the complainant, providing an adequately documented feedback, regarding the possible existence of reasons in fact or in law impeding the possibility of accepting the request of the interested party to obtain copy of the aforementioned personal data;

d) alternatively, pursuant to art. 58, par. 1, lett. a), of the Regulation and 157 of the Code, in the event that the Order has already provided a response to the aforementioned request of the interested party, to inform the Authority of this circumstance, providing, within the same period indicated above, a reply properly documented.

## HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, considering that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019;

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation.

Pursuant to art. 78 of the Regulation, 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, September 16, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE DEPUTY SECRETARY GENERAL

Philippi