

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 26

November

2020

DECISION

DKE.561.20.2020

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256) 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. 2 lit. b) in connection with joke. 58 sec. 1 lit. a) and e) of the Regulation of the European Parliament and of the EU Council 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general on data protection) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings regarding the imposition of an administrative fine on Z. Sp. j. President of the Personal Data Protection Office gives a reminder for infringement by Z. Sp. j. the provisions of Art. 58 sec. 1 lit. a) and e) of 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, page 1, as amended), consisting in failure to provide the information necessary to the President of the Personal Data Protection Office for the performance of his tasks.

Justification

In the proceedings with reference number [...], initiated on the basis of a notification by Z. Sp. j. (hereinafter also referred to as the "Company") about breaking into the server, it was found that the notification was deficient: it did not include all the data indicated in Art. 33 paragraph 1 and 3 of 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, page 1, as amended), hereinafter also referred to as "Regulation 2016/679", needed by the President of the Personal Data Protection Office to assess the breach of personal data protection.

In a letter of [...] December 2019, delivered on [...] December 2019, the President of the Personal Data Protection Office informed the Company about the content and form of a correct notification of a personal data breach. In addition, the President of the Personal Data Protection Office called on the Company to answer the question whether, in connection with the incident in question, an analysis of the risk of violating the rights and freedoms of natural persons was carried out, necessary to assess whether there was a breach of data protection resulting in the need to notify the President of the Personal Data Protection Office and persons whose the infringement concerns.

In the absence of a reply to this letter, the President of UODO, in a letter of [...] February 2020, delivered on [...] March 2020, again called on the Company to provide the above-mentioned information.

By letter delivered on [...] March 2020, the Company provided explanations that turned out to be insufficient. They did not contain answers to the question asked by the President of the Personal Data Protection Office regarding the assessment of a possible violation of the rights and freedoms of persons whose personal data covered by the violation.

In connection with the above, in a letter of [...] July 2020, the President of the Personal Data Protection Office informed the Company for the third time about the content and form in which a personal data breach should be reported and again called for an answer to the question whether the the analysis of the risk of violation of the rights and freedoms of natural persons, necessary to assess whether there has been a breach of data protection resulting in the need to notify the President of the Office for Personal Data Protection and the persons affected by the violation. The letter was delivered on [...] August 2020. The company, despite being informed that failure to respond to the summons, may result in the imposition of an administrative fine in accordance with Art. 83 sec. 5 lit. e) of Regulation 2016/679, did not respond to the request of the President of the Personal Data Protection Office.

In connection with the above, on [...] October 2020, these administrative proceedings were initiated under the reference DKE.561.20.2020. [...] - concerning the imposition of an administrative fine on the Company for violation of Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679 in connection with the failure to provide the information necessary for the President of the Personal Data Protection Office to perform his tasks. Information on the initiation of the administrative procedure in question and the collection of evidence in the case was delivered to the Company on [...] November 2020.

The letter was also summoned to the Company - in order to establish the basis of the administrative penalty, pursuant to Art. 101a paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) - to

present the Company's financial statements for 2019 or a statement on the turnover and financial result achieved by the Company in 2019. under the pain of establishing by the President of UODO the basis for the penalty in an estimated manner. Moreover, the letter indicated that if the Company would provide exhaustive explanations in the proceedings with reference number [...], to be granted by the President of the Personal Data Protection Office and justify the previous failure to respond to these requests, this circumstance may have a mitigating effect on the administrative pecuniary penalty imposed in the present proceedings, ref. No. DKE.561.20.2020. [...] or may result in withdrawal from its imposition.

On [...] November 2020, the Office for Personal Data Protection received a letter from the co-owner of the Company, containing detailed substantive explanations regarding reference number [...], a correctly completed personal data breach notification form and explanation of the reasons for the lack of response to the request of the President of the Personal Data Protection Office of [...] July 2020. as a result, the letter did not reach the right person on time. The sent letter also contained attachments corresponding to the explanations in the case [...] and attachments requested by the President of the Personal Data Protection Office in these proceedings in order to establish the basis for the administrative penalty, i.e. a copy of the balance sheet and the Company's profit and loss account for 2019.

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), and is subject - in accordance with art. 83 sec. 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 being applicable. It should also be indicated that the controller and the processor are obliged to cooperate with the supervisory authority in the performance of its tasks, as provided for in Art. 31 of Regulation 2016/679.

The President of the Personal Data Protection Office, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679, it may also consider it justified to provide the Company 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, for more effective enforcement of the provisions of the Regulation, sanctions, including administrative fines, should be imposed for breaches of the Regulation, in addition to or instead of appropriate measures imposed by the supervisory authority under this Regulation. If the infringement is minor, the fine may be replaced by an admonition. However, due attention should be paid to the nature, gravity and duration of the breach, whether the breach was not intentional, the steps taken to minimize the harm, the degree of liability or any previous relevant breach, how the supervisory authority became aware of on a breach, on compliance with the measures imposed on the controller or processor, on the application of codes of conduct, and on any other aggravating or mitigating factors.

Referring the above-mentioned provisions of the Regulation 2016/679 to the facts established in this case, it should be stated that the Company as the administrator of personal data and at the same time a party to the proceedings with reference number [...], by failing to respond to the request of the President of the Personal Data Protection Office of [...] July 2020 to provide explanations, breached the obligation to provide the President of the Personal Data Protection Office with access to information necessary for the performance of his tasks, resulting from Art. 58 sec. 1. lit. a) and e) of Regulation 2016/679. In this case, the information important for the further course of the proceedings was to determine whether, in connection with the Company's notification of hacking the servers and encrypting their content, an analysis was made in terms of the risk of breach

of data protection, resulting in the need to notify the President of the Personal Data Protection Office and persons affected by the breach of personal data protection.

As a result of the initiation of this proceeding, the Company resumed cooperation with the President of the Personal Data Protection Office by sending a letter to the Office for Personal Data Protection on [...] November 2020 from the co-owner of the Company, containing detailed explanations regarding reference number [...] and a correctly completed personal data breach notification form, which allowed the President of the Personal Data Protection Office to conduct further proceedings in case no. [...].

At the same time, the reason for the lack of response to the request of the President of the Personal Data Protection Office of [...] July 2020 was indicated, which was the direct cause of the initiation of this proceeding, ref. No. DKE.561.20.2020. [...]. The explanations indicated that the reason for the lack of response to the letter of the President of the Personal Data Protection Office was organizational changes in the office work of the Company, as a result of which the letter did not reach the right person on time. In the present case, it is not disputed that the organization of the office in a manner enabling the proper circulation of correspondence is the responsibility of the Company. In the opinion of the President of the Personal Data Protection Office, the explanation presented by the Company - as long as it does not take the responsibility of the Company as the data controller for not responding to the requests of the President of the Personal Data Protection Office - is, however, credible. Such a conclusion can be derived from the history of the case reference number [...]. The company did not respond to the first request of the President of the Personal Data Protection Office of [...] December 2020, and then immediately responded to the second request sent on [...] February 2020, sending a reply on [...] March 2020. This allows us to assume not so much the lack of will or willingness to cooperate with the President of the Personal Data Protection Office, but the ineffectively organized flow of correspondence signaled by the Company or the division of duties in this respect on the part of the Company. Similarly, the Company did not respond to the president's request from [...] July 2020, but after receiving information about the initiation of this procedure, it contacted the company by phone and then sent detailed explanations. Therefore, in the opinion of the President of the Personal Data Protection Office, in the present state of affairs, apart from the lack of a response to the summons of [...] July 2020, which was the direct reason for initiating this procedure, no other indications were found that the Company would not cooperate with the President of the Personal Data Protection Office. It is also important that by letter delivered on [...] March 2020, the Company has already replied to the case DKE.561.20.2020. [...].

and the content of the explanations submitted at that time is consistent with the current, detailed explanations of the Company that were received by the Office on [...] November 2020, i.e. after the initiation of these proceedings.

In the opinion of the President of UODO, all the circumstances of the case, considered jointly, allow the conclusion that the lack of response to the requests of the President of UODO in the proceedings with reference number [...] Was not deliberate.

In connection with the above, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, according to which each supervisory authority has the right to issue a reminder to the controller or processor in the event of a breach of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office considers it justified to grant Z. Sp. j. admonitions in the scope of the infringement of the provisions of Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679.

The admissibility of replacing a financial penalty with a warning is also justified by recital 148 of Regulation 2016/679, which states that sanctions, including administrative fines, should be imposed "in order to make the enforcement of the provisions of this Regulation more effective". The President of the Personal Data Protection Office decided that in the case in question, in the light of the criteria set out in Art. 83 sec. 2 of Regulation 2016/679, it will be sufficient to issue a reminder.

However, it should be noted that in the event of a similar event occurring in the future, each reminder issued by the President of the Personal Data Protection Office against the Company will be taken into account when assessing the premises for a possible administrative penalty, in accordance with the principles set out in Art. 83 sec. 2 of the Regulation 2016/679.

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

The decision is final. The party has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the Office for Personal Data Protection (address: ul. Stawki 2, 00-193 Warsaw). The complaint should be filed with a permanent fee in the amount of PLN 200, in accordance with Art. 231 in connection with Art. 233 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325, as amended). A party (natural person, legal person, other organizational unit without legal personality) has the right to apply for the right to assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right to aid may be granted upon the application of a party submitted before the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

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