

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 15

April

2021

DECISION

DKE.561.3.2021

Based on Article. 104 § 1 of the Act of 14 June 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. 31, art. 58 sec. 1 lit. a) and e) and 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 to impose an administrative fine on N. sp. Z oo, represented by legal counsel Ł .S., President of the Personal Data Protection Office issues a warning N. sp. z o. o. for violating the provisions of Art. 31 and 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 the lack of cooperation with the President of the Personal Data Protection Office in the performance of his tasks and failure to provide access to information necessary for the President of the Personal Data Protection Office to perform his tasks in the proceedings [...].

Justification

In the proceedings with reference number [...], initiated on the basis of a complaint by R. Ż. z o.o. (hereinafter also referred to as the Complainant), regarding irregularities in the processing of his personal data by N. sp. By letter of [...] July 2020, delivered to the office on [...] July 2020, the Company provided written explanations.

Due to the need to make further arrangements in the matter, in a letter of [...] August 2020, delivered on [...] August 2020, the President of the Personal Data Protection Office called the Company to supplement the explanations in the matter by referring

to the specifically indicated issues - within 7 days from the date of delivery of the letter. The company did not respond to this request.

By letter of [...] September 2020, delivered on [...] October 2020, the President of UODO again called on the Company to provide supplementary information on the matter - within 7 days from the date of delivery of the letter. The letter contained an instruction that failure to reply to it may result in the imposition of an administrative fine. The company also did not respond to this request.

In connection with the above, the following administrative proceedings were initiated under the reference DKE.561.3.2021 - concerning the imposition of an administrative fine on the Company for violation of Art. 31 and 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 provided by the President of the Personal Data Protection Office and justify the previous failure to respond to these requests, this circumstance may result in the mitigation of the administrative fine imposed in this proceeding or may result in waiving its imposition.

On [...] March 2021, the Office for Personal Data Protection received a letter from the Company's attorney in which responses were provided to the requests of the President of the Personal Data Protection Office (UODO) in the proceedings [...]. The letter indicated that the lack of response to the calls caused problems in the flow and handling of correspondence in the Company, caused by the reduction of the number of employees due to the difficult financial situation of the Company caused by the ongoing COVID-19 epidemic.

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)). 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.

Violation of the provisions of Art. 31 and art. 58 sec. 1 lit. a) and f) of Regulation 2016/679 referred to above, consisting in failure to provide access to data and information by the controller or the processor, is subject to - 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. 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. The President of the Personal Data Protection Office, acting pursuant to art. 58 sec. 2 lit. b) of the Regulation 2016/679 may be considered justified to provide the Company with a reminder in the scope of the infringement of the provisions of Art. 31 and 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 actual state of affairs in this case, it should be stated that the Company, as a personal data controller, being a party to the proceedings with reference number [...], by failing to respond to requests for explanations, it breached Art. 31 of Regulation 2016/679 due to the lack of cooperation with the President of the Personal Data Protection Office in the performance of his tasks, as well as art. 58 sec. 1 lit. a) and e) of Regulation 2016/679 by failing to provide the President of the Personal Data Protection Office with access to information necessary for the performance of his tasks.

The President of UODO twice called the Company to submit explanations. The first of these calls was delivered to the Company on [...] August 2020 and the second on [...] October 2020. None of the letters received a reply within the indicated period of 7 days from the date of their delivery. This omission by the Company resulted in the necessity to initiate the present proceedings to impose an administrative fine on the Company. As a result of the initiation of these proceedings, the Company resumed cooperation with the President of the Personal Data Protection Office by sending [...] in March 2021 detailed explanations in the proceedings [...], which allowed the President of the Personal Data Protection Office to continue the proceedings.

In the present case, it is not disputed that the organization of the internal circulation of properly delivered correspondence is the responsibility of the Company. In the opinion of the President of the Personal Data Protection Office, the justification provided by the Company for not responding to his requests does not take the responsibility of the Company, as the data controller, for this omission. At the same time, however, it is a credible explanation. In the opinion of the President of the Personal Data Protection Office, it should be concluded that the failure of the Company to respond to his requests could have caused the problems in the flow and handling of correspondence, mentioned in the letter of the Company's representative, indirectly caused by the COVID-19 epidemic.

In the present state of facts, apart from the lack of a response to the requests for explanations, which was supplemented by the Company as a result of the initiation of this proceeding, no other indications were found that the Company would not cooperate with the President of the Personal Data Protection Office. The circumstances of the case allow the conclusion that the lack of response of the Company to the calls of the President of the Personal Data Protection Office in the proceedings with reference number [...] Was not intentional.

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 violation of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office considers it justified to grant N. Sp. z o. o. admonition in the scope of the found violation of the provisions of Art. 31 and 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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