

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 06

September

2021

DECISION

DKE.561.22.2021

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. a) and lit. e) in connection with 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 regulations) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings on the imposition of an administrative fine on D. Sp. z o.o., President of the Personal Data Protection Office, gives a reminder D. Sp. z o.o. for violation of the provisions of Art. 31 and art. 58 sec. 1 lit. a) and 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 Personal Data Protection Office received a complaint from Mr. J. S. (hereinafter referred to as "the Complainants") about irregularities in the processing of their personal data by D. Sp. z o.o. (hereinafter referred to as the "Company").

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 (file number [...]), in a letter of [...] September 2020, asked the Company to comment on the content of the complaint and to answer the following specific questions about the case:

from what source, on what legal basis (please list specific legal provisions), for what purpose (please list all currently pursued purposes) and scope (please list all categories of data), Company D. obtained the Complainant's personal data, is Company D. currently processing the complainant's personal data, and if so, on what legal basis (please list specific legal provisions), for what purpose (please list all currently pursued purposes) and scope (please list all categories of data); whether Company D. fulfilled the information obligation towards the Complainant in relation to the processing of his personal data;

whether, and if so, on what legal basis (please list specific legal provisions), for what purpose (please list all currently pursued goals) and scope (please list all categories of data), Company D. shared the Complainant's personal data with another entity, and in particular whether they were made available to Company L. (please list all entities to whom the complainant's personal data were made available);

whether Company D. has concluded a contract for entrusting the processing of personal data with Company L. (please send a copy of a possible contract after removing the information constituting a business secret from it);

whether the Complainant asked Company D. to delete his personal data, and if so, whether the request was accepted and how it was carried out;

whether the Complainant asked Company D. to provide him with information on the entities to whom his personal data was disclosed, and if so, whether the request was taken into account and how it was carried out.

The President of the Personal Data Protection Office (UODO) addressed requests for explanations to the Company also by letters from: [...] December 2020, [...] January 2021, [...] March 2021. The letter of [...] December 2020 was received by the Company on [...] December 2020, and the letter of [...] January 2021 was received on [...] January 2021. However, the letter of [...] March 2021 was not received by the Company. The above letter, after two notifications on [...] March 2021 and [...] March 2021, returned to the Personal Data Protection Office with the annotation "The return has not been made on time", and was therefore considered delivered to the Company in accordance with Art. 44 § 4 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended) (hereinafter referred to as "k.p.a.").

By letter [...] of November 2020, the Company responded to the above-mentioned questions, however, the letter did not meet the formal requirements set out in Art. 63 of the Code of Civil Procedure, i.e. it was not signed by hand and was not submitted in the form of an electronic document by the Electronic Platform of Public Administration Services (ePUAP). However, in the

letter of [...] January 2021, the Company provided additional explanations to the President of the Personal Data Protection Office, however, these explanations did not refer to the Company's letter of [...] November 2021, only to the letter of [...] December 2020, unknown to the President of the Personal Data Protection Office. , it was necessary to further summon the Company - by letters from: [...] May 2021, [...] July 2021 - to supplement the formal shortcomings consisting in affixing a handwritten signature to the letter of [...] November 2020 or submitting this letter in the form of an electronic document by the Electronic Platform of Public Administration Services (ePUAP).

These letters have already been sent to the Company via the electronic Platform of Public Administration Services (ePUAP) to the address of the Company's individual inbox, i.e. a box [...] - in accordance with the will of the Company expressed in the letter of [...] March 2021. Letter of [...] May 2021 was considered delivered to the Company on [...] May 2021, which is confirmed by the automatically generated by the system official confirmation of the delivery of [...] the correspondence in question. On the other hand, the letter of [...] July 2021 was deemed delivered to the Company on [...] July 2021, which is confirmed by the automatically generated by the system official confirmation of the delivery of [...] the correspondence in question. The summons addressed to the Company by letters from: [...] May 2021 and [...] July 2021 remained unanswered. In a letter of [...] July 2021, the Company was informed that failure to respond to the requests 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. a) and lit. e) Regulation 2016/679 - imposing an administrative fine on the Company.

Due to the failure by the Company to provide complete and detailed information necessary to resolve the case no. [...], initiated by the complainant's complaint, the President of the Personal Data Protection Office (UODO) initiated ex officio against the Company - pursuant to Art. 83 sec. 5 lit. e) of Regulation 2016/679, due to the breach by the Company of Art. 31 and art. 58 sec. 1 lit. a) and e) of the Regulation 2016/679 - administrative proceedings to impose an administrative fine on the Company (reference number DKE.561.22.2021). The Company was informed about the initiation of administrative proceedings and the collection of evidence in the case in a letter of [...] August 2021. This letter was also requested by the Company - in order to establish the basis for the 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 2020 or - in the absence thereof - a statement on the amount of turnover and financial result achieved by the Company in 2020, the Company was also instructed that in the event of failure to present the above-mentioned documents, the President of the Personal Data Protection

Office will determine the penalty in an estimated manner. In the above-mentioned In writing, the Company was also informed that if it provided exhaustive explanations in the proceedings with reference number [...], to be provided, as requested by the President of the Personal Data Protection Office and justify the previous failure to respond to these requests, this circumstance in the proceedings with reference number [...] May have a mitigating effect on the size of the administrative fine or may result in waiving its imposition.

In response to the letter informing about the initiation of proceedings to impose an administrative fine on the Company, the Company submitted exhaustive explanations that allowed the President of the Personal Data Protection Office to continue proceedings in the case no. [...].

In addition, by letter of [...] August 2021, the Company explained that:

Mr. T. D., a partner of the Company, as the only one authorized in the Company to receive correspondence via the electronic Platform of Public Administration Services (ePUAP) from the mailbox: [...], letters of [...] May 2021 and [...] July 2021 summoning the Company to supplemented the formal deficiencies consisting in affixing a handwritten signature to the letter of [...] November 2020 or submitting this letter in the form of an electronic document by the Electronic Platform of Public Administration Services (ePUAP), he could not collect them on time due to the lack of access to the mailbox: [...] electronic Platform of Public Administration Services (ePUAP).

The reason for the lack of access to the above-mentioned of the mailbox was the arrest of Mr. T. D. in the case with reference number [...] and detention in the Remand Center in L., from [...] April 2021 to [...] July 2021 as a suspect pursuant to the Order of the Prosecutor of the District Prosecutor's Office in K. of [...] April 2021 .

Mr. T. D. on the basis of the Order of the Prosecutor of the District Prosecutor's Office in L. of [...] July 2021, ref. No. the act [...] was released from the Remand Center in L. However, the certificate of release from the Remand Center in L. of [...] July 2021 also confirms that from [...] April 2021 to [...] July 2021 Mr. T. D. was deprived of liberty.

The deprivation of liberty of Mr. T. D. in the above-mentioned days resulted in the fact that he could not receive correspondence from the President of the Personal Data Protection Office (UODO) addressed to the Company via the electronic Platform of Public Administration Services (ePUAP), and thus participate in activities related to the Complainant'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) of Regulation 2016/679, the President of the Personal Data Protection Office - as a supervisory authority within the meaning of art. 51 of the 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 an 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 right to conduct 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)).

In addition, 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 powers 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 (5) (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 authority in the performance of its tasks (Article 31), and is subject to - pursuant to 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) of Regulation 2016/679.

Pursuant to recital 148 of Regulation 2016/679, for more effective enforcement of the Regulation, sanctions, including

administrative fines, should be imposed for breaches of the Regulation, in addition to or in place 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 steps taken to minimize the harm, the degree of liability or any prior 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 Regulation 2016/679 to the factual situation established in this case, and described at the beginning of this decision, it should be stated that the Company - the administrator of the complainant's personal data, Mr. J. S., - as a party to the proceedings conducted by the President of the Personal Data Protection Office, ref. [...] 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.561.22.2021.DS, the Company submitted explanations allowing the President of the Personal Data Protection Office to conduct further proceedings in the case No. [...].

In the opinion of the President of the Personal Data Protection Office, the Company's activities certainly resulted in the lack of access to evidence indicating the legality and lawfulness of the processing of the Complainant's personal data by the Company. The justification provided by the Company 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. However, the reasons for the lack of cooperation with the supervisory body indicated by the Company had to be considered as credible and having a significant impact on the assessment of the Company's behavior in the context of the choice of the sanction applied to it in these proceedings.

In the opinion of the President of the Personal Data Protection Office, the above-mentioned the breach was unintentional. All the circumstances of the case, considered jointly, allow the conclusion that the lack of reaction of the Company to the calls for explanations and for supplementing formal deficiencies consisting in affixing a handwritten signature to the letter of [...] November 2020 or submitting this letter in the form of an electronic document via Electronic The Public Administration Services Platform (ePUAP) was not purposeful.

In the course of these proceedings, the Company expressed its willingness to cooperate with the President of the Personal Data Protection Office (UODO) in order to remedy the violation consisting, in particular, in providing explanations in the scope in which the proceedings with reference number [...], justifying the lack of this cooperation, inter alia, imprisonment of Mr. T. D. from [...] April 2021 to [...] July 2021, as the only person authorized in the Company to receive correspondence via the electronic Platform of Public Administration Services (ePUAP) from the mailbox: [...], which resulted in the inability to receive letters from: [...] May 2021 and [...] July 2021 and to participate in activities related to the Complainant's case.

In the opinion of the supervisory body, the Company's follow-up assets show the readiness to continue to cooperate with it. At this point, it should also be noted that the very initiation of the proceedings to impose an administrative fine and the real perspective of imposing a financial penalty have become a clear signal for the Company that further avoidance of the obligations imposed by the provisions of Regulation 2016/679 will inevitably lead to the application of the most severe sanctions provided for by these provisions. In order to avoid similar situations in the future, the President of the Personal Data Protection Office indicates that the Company should immediately inform about any obstacles preventing the Company from timely fulfillment of its obligations towards the data protection authority, as soon as they arise.

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 of Regulation 2016/679, will be sufficient, and at least as "effective, proportionate and dissuasive" as imposing a fine (see Art. 83 (1) of Regulation 2016/679).

It should also be noted that in the event of a similar event 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 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 to 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.

2021-11-02