

[doc. web n. 9704069]

Injunction order against the Municipality of Montalbano Jonico - 16 September 2021

Record of measures

n. 324 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 / EC, "General Data Protection Regulation" (hereinafter "RGPD");

GIVEN the d. lgs. June 30, 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter the " Code ");

GIVEN the general provision n. 243 of 15/5/2014 containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities", published in the Official Gazette. n. 134 of 12/6/2014 and in www.gpdp.it, doc. web n. 3134436 (hereinafter "Guidelines on transparency");

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, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN the documentation in the deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and operation of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web n. 1098801;

Speaker prof. Pasquale Stanzione;

WHEREAS

1. Introduction

This Authority has received a complaint from Mr. XX (hereinafter "complainant"), with which a violation of the legislation on the protection of personal data by the Municipality of Montalbano Jonico was contested.

Specifically, as emerged from the preliminary verification carried out by the Office on XX, on the institutional website of the aforementioned Municipality in the "Documents and data" / "Praetorian register" / "historical" area it was possible to view the documents of the entity.

In this regard, by filling in the appropriate search form, it was possible to freely view and download the settlement Resolution no. XX of the XX (no. XX of the General Protocol; order no. XX of the Publications Reg.) Concerning "XX".

The aforementioned determination was also viewable at the following url:

- [http: // ...;](#)
- [http: //](#)

The aforementioned settlement Resolution no. XX of the XX reported in clear text, in the text and in the subject, personal data and information, such as the name of the complainant and his dependent father with indication of the relative disability situation as a handicapped person. The text of the resolution also contained the date and place of birth, residence, as well as information relating to the payment of the amount of the contribution envisaged for the overcoming and elimination of architectural barriers present in one's accommodation with indication of the address of the disabled person, of the individual works carried out (including detailed references to the invoices and the indication of the works company to which it was addressed).

2. The legislation on the protection of personal data

Pursuant to the relevant regulations, "personal data" is "any information concerning an identified or identifiable natural person ("interested")" and "the natural person who can be identified, directly or indirectly, with particular reference to a identifier such as the name, an identification number, location data, an online identifier or one or more characteristic elements of its physical, physiological, / genetic, psychic, economic, cultural or social identity "(art. 4, par. 1, No. 1, of the GDPR).

With particular reference to the case submitted to the attention of this Authority, please note that public entities, such as the Municipality, may disclose "personal data" only if this operation is provided for "by a law or, in the cases provided for by law, of regulation "(Article 2-ter, paragraphs 1 and 3, of the Code), in compliance - in any case - with the principles of data protection,

including that of "minimization", on the basis of which data personal data must be "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter c, of the GDPR).

In this context, it is noted that, in any case, the dissemination of data relating to health is prohibited (Article 2-septies, paragraph 8, of the Code; see also Article 9, paragraphs 1, 2, 4, of GDPR), ie "personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his state of health" (Article 4, paragraph 1, no. 15 ; recital 35 of the GDPR).

The state legislation of the sector also provides that "All the resolutions of the municipality and of the province are published by publication on the praetorian notice, at the headquarters of the body, for fifteen consecutive days, except for specific provisions of the law" (art. 124, paragraph 1, legislative decree no. 267 of 18/8/2000).

In this regard, it is recalled that, since 2014, the Guarantor has highlighted that data suitable for revealing the state of health is not only an indication of the pathology, but any information "from which the state of illness can be inferred, even indirectly or the existence of pathologies of the subjects concerned, including any reference to the conditions of invalidity, disability or physical and / or mental handicap "(see provision no. 243 of 5/15/2014 containing the " Guidelines on the treatment of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities ", published in the Official Gazette no. 134 of 12/6/2014 and in www.gpdp.it, web doc. no. 3134436, first part par. 2 and second part, par. 1; as well as provisions cited therein in note no. 5).

With regard to the publication of deeds and documents in the praetorian register, in the Guidelines of the Guarantor cited above, it is also expressly indicated that once the time period for publication has elapsed:

- "Local authorities cannot continue to disclose the personal data they contain. Otherwise, for the period exceeding the duration envisaged by the reference legislation, an illegal dissemination of personal data would be determined because it is not supported by suitable regulatory conditions [...]. In this regard, for example, the permanence on the web of personal data contained in the resolutions of local authorities beyond the term of fifteen days, provided for by art. 124 of the aforementioned d. lgs. n. 267/2000, can integrate a violation of the aforementioned art. 19, paragraph 3, of the Code [n.d.r. today reproduced in art. 2-ter, paragraphs 1 and 3, of the Code], where there is no different legislative or regulatory parameter that provides for its disclosure [...]. [In this case] if the local authorities want to continue to keep the deeds and documents published on their institutional website, for example in the sections dedicated to the archives of the deeds and / or legislation of the body, they

must make the appropriate measures for the protection of personal data. In such cases, therefore, it is necessary to obscure in the published documentation the data and information suitable for identifying, even indirectly, the interested parties "(second part, par. 3.a).

3. Preliminary assessments of the Office on the processing of personal data carried out.

Following the checks carried out on the basis of the elements acquired and the facts that emerged as a result of the investigation, as well as subsequent assessments, the Office, with note prot. n. XX of the XX, has ascertained that the Municipality of Montalbano Jonico - by disseminating the personal data and information contained in the document published online described above - has carried out a processing of personal data that does not comply with the relevant regulations on the protection of personal data contained in the RGPD . Therefore, with the same note the violations carried out (pursuant to art.166, paragraph 5, of the Code) were notified to the aforementioned Municipality, communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGPD and inviting the aforementioned administration to send to the Guarantor defensive writings or documents and, if necessary, to ask to be heard by this Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as art.18, paragraph 1, of law no. 689 of 11/24/1981).

4. Defensive memories.

The Municipality of Montalbano Jonico, with the note prot. XX of the XX, sent to the Guarantor his defense writings in relation to the violations notified.

In this regard, please note that, unless the fact constitutes a more serious crime, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable pursuant to art. 168 of the Code, entitled "False statements to the Guarantor and interruption of the performance of the tasks or the exercise of the powers of the Guarantor".

In particular, with regard to the conduct held, it was highlighted by the Municipality of Montalbano Jonico, among other things, that:

- «In relation to the notification of the violation [disputed], we inform you that for some time this body has promptly taken steps to obscure the names of the liquidation resolution no. XX (n. XX General Prot. - n. XX Publications Reg.), Which, due to mere error and misunderstanding between the offices, had been published in its entirety »;

- "So much was also highlighted [by the complainant], drafter of the complaint, who with a note of the XX prot. n. XX [...]

communicated that he was promptly satisfied as the municipal offices behaved promptly and resolved the problem »;

- "In any case, the appropriate operating instructions to the staff on the processing of personal data have been reiterated so that the publications of the documents are always carried out in accordance with the provisions in force, as among other things this body has always carried out".

5. Evaluations of the Guarantor

The issue that is the subject of the case submitted to the attention of the Guarantor concerns the disclosure of the complainant's personal data and information, also relating to health, contained in the text and subject of the aforementioned Liquidation Resolution no. XX del XX published online on the institutional website of the Municipality of Montalbano Jonico (such as the name of the complainant and his dependent father with indication of the relative disability situation as a handicapped person; the date and place of birth, residence, as well as information relating to the payment of the amount of the contribution envisaged for the overcoming and elimination of architectural barriers present in one's accommodation with indication of the address of the disabled person, of the individual works carried out, including detailed references to invoices and the indication of the work company to which it is addressed).

As part of the investigation opened in this regard by this Authority, the aforementioned Municipality confirmed, in its defense briefs, the online dissemination of the personal data described, representing that it had published in full the Resolution object of dispute for mere error and misunderstanding between the offices, as well as having taken steps to obscure the personal data present.

6. Outcome of the investigation relating to the complaint presented

The circumstances highlighted in the defense writings examined as a whole, which attribute the conduct required to a mere clerical error, certainly worthy of consideration for the purpose of evaluating the conduct, are not sufficient to allow the filing of this proceeding, since none of the hypotheses exist. provided for by art. 11 of the Guarantor Regulation n. 1/2019.

In this context, the preliminary assessments of the Office are confirmed with the note prot. n. prot. XX of the XX and the unlawfulness of the processing of personal data carried out by the Municipality of Montalbano Jonico is noted, as the dissemination on the institutional website:

1) of the data on the health of the complainant's parent, occurred in violation of the prohibition provided for by art. 2-septies, paragraph 8, of the Code and art. 9, para. 1, 2 and 4, of the GDPR;

2) personal data and information - such as date and place of birth, residence, information relating to the payment of the amount of the contribution provided for the overcoming and elimination of architectural barriers present in the accommodation with indication of address of the disabled person, the individual works carried out (including invoices and the indication of the works company to which it was addressed) - occurred in violation of the principle of "minimization" of the data, considering that the same do not appear to be been "limited to what is necessary with respect to the purposes for which they are processed", pursuant to art. 5, par. 1, lett. c), of the GDPR;

3) of the complainant's data occurred in the absence of suitable regulatory conditions for the period exceeding the fifteen days provided for by art. 124, paragraph 1, of the d. lgs. n. 267/2000 for publication in the praetorian register, in violation of art. 2-ter, paragraphs 1 and 3, of the Code; as well as the basic principles of processing contained in articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller declared that he had removed the personal data object of the Office's dispute from the institutional website, without prejudice to what will be said on the application of the sanction administrative pecuniary, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

7. Adoption of the injunction order for the application of the pecuniary administrative sanction (Articles 58, paragraph 2, letter i; 83 of the GDPR)

The Municipality of Montalbano Jonico appears to have violated the articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b); 9, para. 1, 2 and 4, of the GDPR; as well as Articles 2-ter, paragraphs 1 and 3 (see also Article 124, paragraph 1, of Legislative Decree No. 267/2000); 2-septies, paragraph 8, of the Code.

In this regard, art. 83, par. 3, of the RGPD, provides that «If, in relation to the same treatment or related treatments, a data controller or a data processor violates various provisions of this regulation, with willful misconduct or negligence, the total amount of the pecuniary administrative sanction does not exceeds the amount specified for the most serious violation '.

In the present case, the violation of the aforementioned provisions - also considering the reference contained in art. 166, paragraph 2, of the Code - is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the GDPR, which therefore applies to the case in question.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGPD, as well as art. 166 of the Code, has the corrective power

to "inflict a pecuniary administrative 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 every single case ". 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).

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 GDPR.

In this sense, the detected conduct in violation of the regulations on the protection of personal data is of a culpable nature. The same concerned the online dissemination of personal data, referring only to two interested parties, for about two years, also relating to health (Article 9 of the RGPD). The Municipality of Montalbano Jonico is in any case a small body (about 7,000 inhabitants), which, following the request of the Office, intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to remedy the violation, mitigating the possible negative effects. With regard to the assessment of the conduct, the circumstance declared by the Municipality regarding the accidental nature of the incident resulting from a "mere error and misunderstanding between the offices", as well as the fact that the complainant himself wrote to the Municipality to communicate that he was satisfied with the relative intervention and that the municipal officials "have behaved in a procedurally flawless, timely and decisive manner with respect to the problem [...] raised". In any case, there are no previous relevant violations of the RGPD committed by the entity.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGPD, to the extent of € 5,000.00 (five thousand) for the violation of Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b); 9, para. 1, 2 and 4, of the GDPR; as well as art. 2-ter, paragraphs 1 and 3 (see also Article 124, paragraph 1, of Legislative Decree No. 267/2000); 2-septies, paragraph 8, of the Code; as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same RGPD.

In relation to the specific circumstances of this case, relating to the dissemination of health data referring to a disabled person, it is also believed that the ancillary sanction of the publication of this provision on the website of the Guarantor, provided for by art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the processing carried out by the Municipality of Montalbano Jonico in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Municipality of Montalbano Jonico, in the person of the pro-tempore legal representative, with registered office in Viale Sacro Cuore, 63 - 75023 Montalbano Jonico (MT) - C.F. 81001250778 to pay the sum of € 5,000.00 (five thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

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to the same Municipality to pay the sum of € 5,000.00 (five thousand), according to the methods indicated in the annex, within 30 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.

Please note that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within the term set out in art. 10, paragraph 3, of the d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

HAS

- the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;
- the annotation in the internal register of the Authority of the violations and measures adopted pursuant to art. 58, par. 2, of the RGPD with this provision, as required by art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the RGPD, of the arts. 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