

Warsaw, on 03

June

2022

Decision

DKE.561.14.2022

Based on Article. 104 § I of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended) in connection with Art. 7 sec. 1 and 2 and art. 60 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with art. 31 and 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 April 27, 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 Regulation) (OJ L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the EU L 127 of 23/05/2018, p. 2, and in the Official Journal of the EU L 74 of 04.03. 2021, p. 35), after conducting administrative proceedings regarding the imposition of an administrative fine on W. Sp. z o.o., President of the Personal Data Protection Office, gives a reminder to W. Sp. z o.o., for violation of the provisions of art. 31 and art. 58 sec. 1 lit. a) and ... e) Regulation of the European Parliament and of the EU Council 2016/679 and 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 (Journal of the EU L 119 of 04.05.2016, p. 1, with changes announced in the Official Journal of the EU L 127 of 23/05/2018, p. 2, and in the Official Journal of the EU L 74 of 04/03/2021 , p. 35) hereinafter referred to as "Regulation 2016/679", consisting in the lack of cooperation with the President of the Office for Personal Data Protection in the performance of his tasks and in the failure to provide access to personal data and information in the proceeding with reference number [...].

Justification

Facts

The Office for Personal Data Protection received a complaint from Ms. A.M. (hereinafter referred to as the "Complainant"), regarding irregularities in the processing of her personal data by W. Sp. z o.o. (hereinafter referred to as the "Company").

The President of the Office for Personal Data Protection (hereinafter referred to as the "President of the Personal Data

Protection Office"), as part of the administrative proceedings initiated to consider the complaint (under the reference number [...]), by letters of [...] January 2022 and [...] February 2022, asked the Company to respond to the content of the complaint and provide explanations:

whether, and if so, on what legal basis (please indicate a specific provision), for what purpose and scope, and in what personal data set, the Company currently processes the Complainant's personal data. In the event that the Company has ceased to process the above-mentioned data, please indicate when it happened.

whether the Company used the complainant's personal data (name, surname, address of residence, PESEL number) in order to pay the amount claimed by the Company in the lawsuit, i.e. PLN [...] (principal amount and PLN [...] (interest on the principal amount, and if so, on what legal basis (please indicate a specific legal provision)?

whether, and if so, when, for which entities, for what purpose and on what legal basis (please indicate the specific legal provision) the Company made the Complainant's personal data available (name, surname, address of residence, PESEL number)?

The letter of January [...] 2022 was received by the Company [...] January 2022.

The letter of [...] February 2022 - after two notifications of [...] February 2022 and [...] March 2022 - returned to the Office with the annotation "Return not taken on time", in therefore, it was 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 2022, item 735, as amended), hereinafter referred to as: "k.p.a". In the letter of [...] February 2022, the Company was instructed that failure to respond to the summons may result - in accordance with Art. 83 sec. 4 lit. a) or 83 par. 5 lit. e) of Regulation 2016/679 - imposing an administrative fine on the Company.

In the absence of a response to the requests of the President of the UODO, these administrative proceedings were initiated under reference number [...] - imposing an administrative fine on the Company for infringement of Art. 31 and art. 58 sec. 1 lit. a) and e) of Regulation 2016/679 due to the lack of cooperation with the President of the UODO in the performance of its tasks by this authority and failure to provide access to personal data and information necessary for the President of the UODO to perform its tasks.

The letter of [...] May 2022 on the initiation of the administrative proceedings in question and the collection of evidence in the case was received by the Company [...] on May 2022. The letter indicated that if the Company provided effectively exhaustive

explanations, requested by the President of the UODO in the letters of [...] January 2022 and [...] February 2022, this circumstance may have a mitigating effect on the amount of the administrative fine imposed in these proceedings or may cause the withdrawal of from its placement.

In a letter of [...] May 2022, the Company replied to questions addressed to it in the case with reference number [...]. At the same time, she explained that the lack of response to the call was caused by illness and stay in the hospital. of Poland". As evidence of the above, the President of the Management Board of the Company - Ms A. R. submitted a certificate from the Independent Public Healthcare Institution of the Ministry of the Interior and Administration in Z. about staying in the hospital from [...] January 2022 to [...] January 2022.

After reviewing all the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

Legal justification

In accordance with art. 57 sec. 1 lit. a) of Regulation 2016/679, the President of the UODO - 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 competence, the President of the UODO considers, among others: complaints by data subjects, conduct investigations into these complaints to the extent appropriate and inform the complainant of the progress and results of these investigations within a reasonable time (Article 57(1)(f)). In order to enable the implementation of such tasks, the President of the UODO is entitled to a number of tasks specified in art. 58 sec. 1 of Regulation 2016/679, rights in the field of conducted proceedings, including the right to order the controller and the processor to provide all information needed to perform its tasks (Article 58(1)(a)) and the right to obtain from the controller and the processor access to any personal data and any information necessary to perform its tasks (Article 58(1)(e)). In addition, the President of the UODO is entitled to a number of specified in art. 58 sec. 2 corrective powers, including issuing reminders to the controller or processor in the event of a breach of the provisions of Regulation 2016/679.

Violation of the provisions of Regulation 2016/679 consisting in failure by the controller or processor to provide access to the data and information referred to above, resulting in a violation of the authority's rights set out in art. 58 sec. 1 (including the right to obtain data and information necessary to perform its tasks) is subject to - in accordance with art. 83 sec. 5 lit. 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. It should also be pointed out that the controller and the processing entity are obliged to cooperate with the supervisory authority as part of the performance of its tasks, as provided for in art. 31 of Regulation 2016/679. The President of the UODO, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679 may consider it justified to issue a warning to the controller or processor regarding the identified violation of the provisions of art. 31 and art. 58 sec. 1 lit. a) and e).

Referring the above-mentioned provisions of Regulation 2016/679 to the facts established in this case and described at the beginning of the justification of this decision, it should be stated that the Company - as a party to the proceedings conducted by the President of the UODO, reference number [...] undoubtedly violated the obligation to cooperate with the President of the UODO and the obligation to provide the President of the UODO with access to personal data and information necessary to perform his tasks - in this case, to substantively resolve the case.

The President of the UODO twice called on the Company to provide explanations. The first of these summons was delivered to the Company [...] in January 2022, and the second was advised twice and finally returned to the sender [...] in March 2022.

None of the letters received a response within the specified time limits of 7 days from the date of their delivery. Preventing access to the information requested by the President of the UODO from the Company prevented a thorough examination of the case with reference number [...] and resulted in the prolongation of the proceedings, which, in turn, is in contradiction with the basic principles governing administrative proceedings - set out in Art. 12 sec. 1 k.p.a. principles of thoroughness and speed of proceedings. This omission by the Company made it necessary to initiate these proceedings regarding the imposition of an administrative fine. However, in response to the information about the initiation of these proceedings, the Company resumed cooperation with the President of the UODO by sending detailed explanations in the proceedings with reference number [...] which enabled the President of the UODO to continue the proceedings in this case. In addition, Mrs. A.R. submitted explanations justifying the reasons for the Company's lack of cooperation with the President of the UODO and submitted relevant evidence to support them.

As mentioned above, there is no doubt that the Company's conduct violated the provisions of Regulation 2016/679. The justification provided by the Company for the lack of response to the request of the President of the UODO does not relieve it of responsibility for the omission found. At the same time, however, the reasons indicated by the Company for the initial lack of cooperation with the supervisory authority should have been taken into account as credible and having a significant impact on

the assessment of the Company's behavior in the context of the choice of sanctions applied to it in these proceedings. In the facts in question, apart from the lack of response to requests for explanations - which was supplemented by the Company as a result of the initiation of these proceedings - there were no other indications of the Company's lack of will to cooperate with the President of the UODO. In the opinion of the President of the UODO, the above the infringement was unintentional. The circumstances of the case, and in particular the subsequent attitude of the Company, allow us to conclude that his initial tardiness was not due to the ill will of the person authorized to represent the Company, nor was it intended to consciously hinder the proceedings. The Company's lack of reaction to the summons addressed to it to provide explanations in the case No. [...], in the opinion of the President of the UODO, was caused by the illness and stay in the hospital of the President of the Management Board of the Company, who - according to the information corresponding to the current copy in the National Court Register - was the only person in the Management Board of the Company and the only person authorized to representation. In addition, the subsequent, active attitude of the Company, in particular providing explanations to the case with reference number [...] and an explanation of the reasons for the lack of response to calls for explanations, indicate readiness to continue cooperation with the President of the UODO. In the opinion of the supervisory authority, the mere initiation of proceedings regarding the imposition of an administrative fine and the real prospect of imposing a financial penalty have become a clear signal for the Company that further evasion of the obligations imposed by the provisions of Regulation 2016/679 will inevitably lead to the application of the strictest, sanctions provided for in these provisions. Nevertheless, in order to avoid similar situations in the future, the President of the UODO indicates that any obstacles preventing the Company from fulfilling its obligations towards the personal data protection authority in a timely manner should be immediately reported by the Company as soon as they occur.

Considering 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 warning to the controller or processor in the scope of the proceedings, the President of the UODO considered it justified to issue a warning to the Company regarding the violation of the provisions of art. 31 and Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679, assuming that in the light of the criteria set out in Art. 83 sec. 2 of Regulation 2016/679, it will be effective and sufficient. However, it should be noted that in the event of a similar event in the future, each reminder issued by the President of the UODO against the Company will be taken into account when assessing the grounds for a possible imposition of an 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 UODO resolved as in the operative part of this decision.

Instruction

The decision is final. The party has the right to lodge a complaint against the decision to the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the UODO (address: ul. Stawki 2, 00 - 193 Warsaw).

The entry fee for a 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 a lawyer, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of the Party submitted before the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

Print article

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