

Warsaw, day 23

May

2022

Decision

DKE.561.9.2022

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) and pursuant to art. 58 sec. 2 lit. b) in connection with art. 31 and art. 58 sec. 1 lit. a) and ... e) 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 Regulation ) (Official Journal of the EU L 119 of 04.05.2016, p. 1, Official Journal of the EU L 127 of 23.05.2018, p. 2 and Official Journal of the EU L 74 of 4.03.2021, p. 35) , after conducting administrative proceedings regarding the imposition of an administrative fine on F. with its registered office in J., President of the Office for Personal Data Protection,

issues a warning to F. with its registered office in J. for violating 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 (Official Journal EU L 119 of 04/05/2016, p. 1, Official Journal of the EU L 127 of 23/05/2018, p. 2, and in 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 UODO in the performance of his tasks and failure to provide the President of the UODO with access to personal data and information necessary to perform his tasks.

Justification

Facts

The Office for Personal Data Protection (hereinafter: "UODO") received a complaint from Mr. Ł. L. zam. in N. (hereinafter referred to as: "the Complainant"), for irregularities in the processing of his personal data by F. based in J. (hereinafter referred to as "F"), consisting in the processing of the Complainant's data without a legal basis, the disclosure of the Complainant's

personal data in name, surname, professional license number, place of employment on the portal [...].

The President of the Office for Personal Data Protection (hereinafter "President of the Personal Data Protection Office"), as part of the initiated administrative proceedings conducted to consider the complaint (under reference number [...]), in a letter of [...] September 2021, asked F. to respond to the content complaints and to answer the following questions:

whether, and if so, on what legal basis (please indicate a specific legal provision), for what purpose and to what extent F. processes the Complainant's personal data;

from what source F. obtained the Complainant's personal data;

whether, and if so, on what legal basis, for what purpose and to what extent F. provides the Complainant's personal data on the website [...] at the address [...];

did the Complainant request F. to delete his personal data from the website [...], and if so, how and when F. responded to the Complainant's request (please send a copy of any correspondence) - in particular, whether F. deleted this data and when did it happen? If no response is given, I am asking for an explanation of the reasons for this.

Due to the fact that F. did not answer the above-mentioned letter, the President of the UODO, in a letter of [...] October 2021, again requested F. to respond to the content of the complaint and to respond to the above-mentioned questions. Both the letter of September 2021 and the letter of October 2021 were delivered to F. in the manner provided for in the Code of Administrative Procedure. about deliveries. F. did not reply to both letters.

In the letter of [...] October 2021, F. was instructed that the lack of an exhaustive response to the summons may result - in accordance with 83 section 5 lit. e) of Regulation 2016/679 - imposing an administrative fine on F. for a violation consisting in the lack of cooperation with the President of the UODO in the performance of his tasks and failure to provide access to personal data and information necessary for the President of the UODO to perform his tasks.

Due to F.'s failure to provide information necessary to resolve the case with reference number [...], the President of UODO, in a letter of March 2022, initiated ex officio proceedings against F. - pursuant to Art. 83 sec. 5 lit. e) of Regulation 2016/679 - administrative proceedings regarding the imposition of an administrative fine on F. (under reference number DKE.561.9.2022).

The letter contained an instruction on the possibility of imposing on F. - in the absence of an exhaustive response to this request - an administrative fine pursuant to Art. 83 sec. 5 lit. e) of Regulation 2016/679 due to the lack of cooperation with the President of the UODO in the performance of his tasks (Article 31 of Regulation 2016/679) and failure to provide access to

personal data and information necessary for the President of the UODO to perform his tasks (Article 58 para. 1 point a) and e) of Regulation 2016/679).

In the above in the letter, F. was also instructed that if she provided exhaustive explanations in the proceedings under ref. no. [...] to provide, which the President of the UODO called for and justifies the earlier lack of response to these requests, this circumstance in the proceedings under ref. no. DKE.561.9.2022 may have a mitigating effect on the amount of the administrative fine or may result in waiving its imposition.

The above factual circumstances were determined by the President of the UODO on the basis of all official correspondence between F. and the President of the UODO, contained in the files of the proceedings with reference number [...]. This correspondence reflects all attempts by the President of the UODO to obtain access to information necessary to perform his tasks, i.e. in this case - to consider the case with reference number [...], and on the other hand - F.'s reaction to the requests of the President of the UODO.

In response to the letter informing about the initiation of proceedings regarding the imposition of an administrative fine on F., F. immediately submitted explanations that allowed the President of the UODO to conduct further proceedings in the case with reference number [...].

F. also justified the reasons for her silence in the proceedings under reference number [...] which the President of the UODO believed. F. indicated that her silence in the proceedings under ref. no. [...] was caused by the multitude of letters sent on one day via the electronic Platform of Public Administration Services (ePUAP). The President of F., as the person personally responsible in F. for sending correspondence to the Personal Data Protection Office (hereinafter also: "UODO") via ePUAP, [...] September 2021, sent seven (7) letters, including one letter with [...] of September 2021 regarding the case with reference number [...]. As a result of an error in the ePUAP system, the letter of September 2021, prepared for sending in response to the request of the President of the UODO of September 2021, was not effectively delivered to the personal data protection authority. In his justification, President F. also pointed to the excess of private duties during this period. However, after receiving the letter of March 2022 on the initiation of administrative proceedings regarding the imposition of an administrative fine on F., within one hour of receipt of this letter, a previously prepared letter of September 2021 regarding the case with reference number . [...] was sent to the Office.

President F., being aware of the lack of cooperation with the President of the UODO, asked to take into account the

above-mentioned explanations and withdrawal from imposing an administrative fine on F.

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 for the performance of 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 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 controller's or processor's failure 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 - 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 global turnover from the previous financial year, with the higher amount applicable . On the other hand, infringement 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), is subject to - pursuant to Art. 83 sec. 4 lit. a) of Regulation 2016/679 - an administrative fine of up to EUR 10,000,000, and in the case of an enterprise - up to 2% of its total annual worldwide turnover from the previous financial year, with the higher amount applicable.

The President of the UODO, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679 may also consider it justified to issue a reminder to the administrator in the scope of the identified violation of the provision of art. 31 in connection with art. 58

sec. 1 lit. e) Regulation 2016/679. Pursuant to recital 148 of Regulation 2016/679, in order to make enforcement of the Regulation more effective, sanctions, including administrative fines, should be imposed for violations 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 a warning. However, due consideration should be given to the nature, gravity and duration of the infringement, whether the infringement was intentional, the actions taken to minimize the damage, the degree of responsibility or any significant previous infringements, the manner in which the supervisory authority became aware of the infringement, compliance with the measures imposed on the controller or processor, the application of codes of conduct and any other aggravating or mitigating factors.

Referring the above-mentioned provisions of Regulation 2016/679 to the facts established in this case and described at the outset of the justification of this decision, it should be stated that F. - the complainant's personal data controller, - as a party to the proceedings conducted by the President of the UODO, reference number [...], undoubtedly violated the obligation to provide the President of the UODO with access to information necessary to perform his tasks - in this case, to resolve the case on the merits. However, in response to the information about the initiation of administrative proceedings in the case with reference number DKE.561.9.2022, F. submitted explanations allowing the President of the UODO to conduct further proceedings in the case with reference number [...]. In the opinion of the President of the UODO, F.'s actions certainly resulted in the lack of access to the evidence necessary to substantively settle the Complainant's case, for the period from November 2021 to the date of initiation of proceedings to impose an administrative fine on F. The justification provided by F. for the lack of response to the requests of the President of the UODO does not relieve him of responsibility for the omission found. However, the reasons for the lack of cooperation with the supervisory authority indicated by F. should have been taken into account as credible and having a significant impact on the assessment of F.'s behavior in the context of the choice of sanctions applied to her in these proceedings.

In the opinion of the President of the UODO, the above-mentioned the infringement was unintentional. All the circumstances of the case, considered together, allow to conclude that F.'s lack of reaction to calls for explanations was not intentional, but resulted primarily from the multitude of letters sent to the UODO in one day via the e-PUAP system, as well as important private matters of the President of F. during this period, which did not allow him to carefully check the dispatch of correspondence to the Office. President F. immediately contacted the UODO in order to provide explanations necessary for

the further conduct of the proceedings with reference number [...] and explained why he remained silent in these proceedings. In the opinion of the supervisory authority, F.'s subsequent, asset attitude indicates readiness to further cooperate with it. At this point, it should also be pointed out that the mere initiation of proceedings regarding the imposition of an administrative fine and the real prospect of imposing an administrative fine became a clear signal for F. that further evasion of the obligations imposed by the provisions of Regulation 2016/679 inevitably led to will be subject to the strictest sanctions provided for in these regulations.

The President of the UODO decided that in this case, issuing a reminder, in the light of the criteria set out 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 Article 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 UODO against F. 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

#### Metadata

#### Provider:

Penalty and Execution Department

#### Produced information:

Wojciech Trebnio

2022-05-23

Entered the information:

Edith Magziar

2023-05-22 11:05:45

Recently modified:

Edith Magziar

2023-05-22 14:07:37