

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

June

2020

## DECISION

DKN.5112.7.2020

Warsaw, June 30, 2020

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. 58 sec. 2 lit. b, in connection with Art. 5 sec. 1 lit. a and art. 6 sec. 1 lit. c of the 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 regarding the processing of personal data by the Secondary School Complex in D., President of the Office for Personal Data Protection,

gives a reprimand for violating the provisions of Art. 5 sec. 1 lit. a and art. 6 sec. 1 lit. c 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), hereinafter referred to as "Regulation 2016/679", consisting in the processing of personal data of students without a legal basis in connection with conducting among them in the 2019/2020 school year, survey research (interviews) regarding their personal situation, using a questionnaire called "Diagnosing the student's home and school situation. Student survey ".

### Justification

Based on Article. 78 sec. 1, art. 79 sec. 1 point 1 and art. 84 sec. 1 points 1-4 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), hereinafter referred to as the "Act", in connection with Art. 57 sec. 1 lit. a and lit. h, art. 58 sec. 1 lit. b and lit. e of the Regulation 2016/679, in order to control the compliance of data processing with the

provisions on the protection of personal data, control activities were carried out at the General Secondary School Complex in D. (file No. DKN.5112.7.2020).

The scope of the inspection covered the processing by the Secondary School Complex in D. (hereinafter also referred to as "ZSO") of students' personal data in connection with the survey conducted among them in the 2019/2020 school year regarding their personal situation, using a questionnaire called "Diagnosing the student's home and school situation. Student survey".

Oral explanations were received from ZSO employees during the inspection. The actual state of affairs was described in detail in the inspection protocol signed by the Director of the ZSO.

On the basis of the evidence collected in the case, it was found that in the process of processing personal data, ZSO, as the controller, violated the provisions on the protection of personal data by processing the personal data of students without a legal basis in connection with the research (interviews) conducted among them in the 2019/2020 school year. ) questionnaires concerning their personal situation, using the questionnaire called "Diagnosing the student's home and school situation. Student survey".

In connection with the above, the President of the Office for Personal Data Protection initiated ex officio administrative proceedings in the field of identified deficiencies, in order to clarify the circumstances of the case (letter of [...] May 2020, ref. [...]).

In response to the notification of the initiation of administrative proceedings, the Director of the ZSO, in a letter of [...] June 2020 (ref. : [...]), provided explanations in which he indicated, inter alia, that a circumstance that should be taken into account by the supervisory authority in connection with the control is the fact that as of [...] July 2019, there were personnel changes in the position of the Director of the ZSO. In addition, the Director of ZSO stated that due to the lack of continuity in the management of documentation and procedures at the ZSO, including those relating to the protection of personal data, he had not been provided with the internal documents of the ZSO regarding the protection of personal data at this facility and that he had not been informed about the person acting as the inspector data protection and its contact details.

The director of the ZSO also indicated that he was "forced" to create rules regarding proper data protection in the ZSO from the beginning, without due support from the data protection officer, who did not contact the ZSO management until the incident covered by the control, so the Director of the ZSO acted on the basis of the knowledge and experience of its staff. Moreover,

after the school pedagogue handed over the questionnaire to the ZSO Director, the Director of ZSO was to indicate in an interview with the above-mentioned educator that the questionnaires must be voluntary and should be anonymous, i.e. the student may or may not complete them, as well as fill in only the part in which he deems it appropriate. The director of the ZSO admitted in the letter that the school educator at that time did not consult the content of the questionnaire with the ZSO data protection officer, because he did not perform his duties properly, i.e. he did not contact the ZSO management during the performance of his duties. Moreover, the Director of ZSO indicated that in each of the classes in which the questionnaires were distributed to students, recommendations were to be issued that the questionnaires were voluntary and could be anonymous. According to the statement of the Director of ZSO, despite managing the above-mentioned provided by the majority of educators, some students indicated their names and surnames or personal data of their parents or legal representatives in the questionnaire.

To the above-mentioned a letter addressed to the Office for Personal Data Protection, the Director of the ZSO attached the following attachments:

- 1) The Information Security Policy in ZSO of 2019,
- 2) order No. [...] of the Director of the Secondary School Complex in D. of [...] October 2019,
- 3) protocol of destruction of questionnaires from [...] October 2019,
- 4) register of incidents related to information security in ZSO,
- 5) analysis of the event in terms of the risk of violation of the rights and freedoms of natural persons (risk analysis) performed by the data protection officer [...] October 2019,
- 6) e-mail correspondence between the Director of ZSO and the data protection officer of [...] October 2019,
- 7) post-control report of the Education Office in L. of [...] October 2019,
- 8) information from the Disciplinary Spokesman for Teachers at the Voivode [...] to the Director of the ZSO with a request to send documents in connection with the initiation of explanatory proceedings,
- 9) the handover-acceptance report for the transfer of the Secondary School Complex in D. of [...] July 2019,
- 10) attendance list of persons trained in the field of personal data protection by the ZSO data protection officer of [...] October 2019.

After reviewing the entirety of the evidence collected in the case, the President of the Personal Data Protection Office

(hereinafter "the President of the Personal Data Protection Office") considered the following:

Art. 5 of Regulation 2016/679 sets out the rules for the processing of personal data that must be respected by all administrators, i.e. entities that independently or jointly with others determine the purposes and methods of personal data processing. Pursuant to Art. 5 sec. 1 lit. and Regulation 2016/679, personal data must be processed lawfully, fairly and in a transparent manner for the data subject ("lawfulness, fairness and transparency"). Moreover, pursuant to Art. 6 sec. 1 lit. c of Regulation 2016/679, processing is lawful only if - and to the extent to which - the condition that the processing is necessary to fulfill the legal obligation incumbent on the controller is met.

In the course of the inspection, it was established (the protocol for accepting oral explanations is attached as Appendix 1 to the inspection protocol) that the ZSO conducted a study among his students using the questionnaire form entitled "Diagnosing the student's home and school situation. Student survey "(hereinafter" survey "). As part of the survey, the personal data of ZSO students were processed, including the data of minors, mainly in the following scope: name and surname, class designation, identification of legal guardians (parents), information about the family status (full, incomplete), as well as information about the death of a legal guardian (parent), separation of legal guardians (parents), their education and professional situation, number of people in the household, financial situation, health condition and addictions of legal guardians (parents), housing situation and the fact of receiving or not receiving financial assistance. Processing of pupils' data took place in the scope of their collection, storage and deletion.

In the course of the inspection, it was also established (the protocols for accepting oral explanations are attached as Annexes 1 and 23 to the inspection protocol) that the survey was carried out in order to identify students who require psychological support from the school they attend. It was also found that the questionnaire was conducted only with the use of blank paper forms, which were distributed to teachers of grades 7-8 and high school classes on the order of the Director of the ZSO. It follows from the above that the personal data of ZSO students were processed only using paper questionnaire forms, on which these data were obtained (collected), then stored and finally destroyed (protocols for accepting oral explanations are Annexes No. 1 and No. 23 to the protocol control). All the copies of the questionnaire returned to the Director of the ZSO were destroyed by a commission on [...] October 2019. According to the findings of the inspection, the personal data contained in the questionnaires were not entered into electronic telecommunications systems, nor were they recorded on electronic data carriers or on other information carriers, in this in paper form. After collecting the questionnaires, the tutors did not make scans,

paper copies, and did not prepare other, additional documents containing personal data regarding the questionnaires. As at the date of commencement of the inspection, the personal data of the students obtained in connection with the questionnaires were no longer processed by the ZSO.

As evidenced by the evidence obtained as a result of carrying out control activities (oral explanation reports are Annexes 20, 22, 23 to the control protocol), the surveys were conducted in a way that prevented unauthorized access to the data contained therein. According to the declarations made by the educators who conducted or were to conduct the surveys, they did not read the content of the completed questionnaires, and thus the personal data contained therein (protocols for accepting oral explanations constitute Annexes No. 20, No. 22, No. 23 to the inspection protocol) . Some educators, after receiving the printed questionnaire forms, did not even conduct the examination at all (the oral explanation protocol is attached as Annex 24 to the inspection protocol), i.e. they did not distribute the above-mentioned forms to the students. forms to be completed. In addition, as explained, the method of storing the questionnaire forms took into account the need to protect them against unauthorized access, i.e. after the completed questionnaires were collected by educators, they were stored in locked cabinets, to which only the above-mentioned persons had access. educators.

In connection with the above findings, it should be stated that the ZSO, by conducting the survey among students, violated the principle of data processing in accordance with the law, expressed in art. 5 sec. 1 lit. and Regulation 2016/679, according to which personal data must be processed in accordance with the law, fairly and in a transparent manner for the data subject. The above principle was developed in the wording of Art. 6 sec. 1 lit. c of Regulation 2016/679, according to which processing is lawful only if - and to the extent that - the condition that the processing is necessary to fulfill the legal obligation incumbent on the controller is met.

Referring to the above-mentioned rules of law, it should be stated that the evidence collected in the course of the inspection allows to state that the processing of personal data of ZSO students was carried out without a legal basis resulting from the provisions of the applicable normative acts.

In particular, it should be noted that in accordance with § 9 of the ZSO Statute and § 1 sec. 11 of the Statute of the Primary School in D. in connection with Art. 9 point 3 of the Act of 27 August 2009 on Public Finance (Journal of Laws of 2019, item 869, as amended), the ZSO is a budgetary unit, and therefore also a unit of the financial sector identical to a public entity within the meaning of the regulation 2016/679. ZSO, as a public entity, may therefore process personal data in the scope of its

tasks imposed by law, only in accordance with Art. 5 sec. 1 lit. a and art. 6 sec. 1 lit. c of the Regulation 2016/679. On the other hand, pursuant to Art. 30a of the Education Law of December 14, 2016 (Journal of Laws of 2019, item 1148, as amended), schools process personal data to the extent necessary for the performance of tasks and obligations arising from these provisions.

It should be noted that the provisions of the Act of 14 December 2016 Educational Law (Journal of Laws of 2019, item 1148, as amended) and other legal acts regulating the principles of the functioning of educational institutions do not specify such tasks and duties of schools that would justify the processing of personal data of students in the way it was done at ZSO in connection with the survey. Conducting a survey, which entailed the processing of students' data by the ZSO, did not constitute the performance of the obligation or task imposed on this educational institution under the Act, and therefore it should be considered that there was also a violation of Art. 6 sec. 1 lit. c of the Regulation 2016/679.

The President of the Personal Data Protection Office, analyzing all the evidence collected during the inspection, concluded that the statements of the Director of the ZSO contained in the letter of [...] June 2020 (ref. : [...]) regarding the key issues for the resolution of this decision do not confirm the findings made in this decision. or they are not of fundamental importance to it, and therefore do not bring new circumstances to it. First of all, it should be pointed out that the fact of personnel changes in the management of the ZSO, referred to by the Director of the ZSO, has no significance for the responsibility of ZSO as the administrator of personal data in the light of Regulation 2016/679. The data administrator, which is the ZSO represented by the Director, is obliged to ensure the continuity of the performance of obligations under the provisions of Regulation 2016/79, regardless of personnel changes to the above-mentioned position. The explanations of the Director of the ZSO in this regard, including the reference to, inter alia, the circumstances of failure to provide him with the documentation, may be of significance at most in the sphere of his liability resulting from the employment relationship between him and the local government body that organizes the ZSO, and not in the sphere of liability resulting from provisions on the protection of personal data.

Moreover, the explanation of the Director of the ZSO that from the beginning of the implementation of the questionnaire and handing over its copies to the teachers of the ZSO, they were instructed about the need to conduct it anonymously, should be considered doubtful. First of all, it should be noted that the questionnaire form, due to the fact that it included a place to indicate the name and surname of the student, suggested filling it in by name, which was a violation of the provisions of Regulation 679/2016. Moreover, the statement of the ZSO Director about the obligation of teachers to instruct students about

the anonymity of the survey is in contradiction with his previous explanations, as well as with the explanations of ZSO teachers. As the Director of ZSO explained during the inspection (the protocol for accepting oral explanations is attached as Annex 1 to the main inspection protocol), he noted during a conversation with the school teacher about the questionnaire that it was not anonymous by definition and instructed the school educator to inform teachers that filling in the questionnaire was optional. He also ordered educators to inform them about the voluntary nature of the survey when distributing the questionnaire forms to the students.

It follows from the above that the recommendations regarding the anonymity of the survey were not formulated towards the educators at the very beginning of the survey, because the voluntary completion of the survey in no way means its anonymity, especially due to its content. This condition is confirmed by the explanations of Ms MK, the ZSO teacher, the class teacher [...] (the protocol for accepting oral explanations is attached as Annex 20 to the main inspection protocol), according to which, when handing over the questionnaire forms to her, the school educator did not inform her about any recommendations regarding the manner or date conduct a survey. According to the explanations of Ms M. K., the questionnaires were filled in by name, i.e. the students gave their names and surnames, and she did not inform the students about her voluntariness and anonymity before completing the questionnaire. Ms. M. K. also mentioned that after the students completed the questionnaires, a teaching council took place, during which her fellow teachers asked the director of the ZSO, Mrs. J. P., about the anonymity and voluntary filling of the questionnaire, as well as the purposefulness of its content. According to Ms. M. K., the Director of ZSO informed during the above-mentioned the teaching council that the questionnaire may be completed by students voluntarily and anonymously. From the replies of the ZSO Director, Ms M. K., however, concluded that there was no general recommendation from the Director that the survey had to be anonymous.

The fact of not informing the class teachers about the necessity to conduct the questionnaire anonymously also results from the explanations of Ms I. J., the teacher of ZSO, the class teacher [...] of the General Secondary School (the protocol for accepting oral explanations is attached as Annex 21 to the main inspection protocol). Ms. I. J. stated that she learned about the survey from the school pedagogue, Ms. D. K., who brought her personally in September 2019 printed and blank questionnaire forms while Ms. I. J. was teaching the class [...] of the General Secondary School. Ms D. K. asked Ms I. J. to conduct a survey among the students of the class [...] and informed her that filling in the questionnaire was voluntary (optional). Ms D. K., on the occasion of handing over the questionnaire forms to Ms I. J., did not inform her of any other recommendations

regarding the manner or timing of the survey.

Explanations of similar content were also provided by: Ms WM, teacher of the Secondary School Complex in D., class teacher [...] of the General Secondary School (the protocol for accepting oral explanations is attached as Annex 22 to the main inspection protocol), Ms. MD, teacher of the Secondary School Complex in D., the class teacher [...] of the General Secondary School (the statement of explanations is attached as Appendix 23 to the protocol of the main control) and Mrs. MC, teacher of the Secondary School Complex in D., the class teacher [...] of the General Secondary School (the oral explanation protocol is attached as Appendix 24 to the protocol main control). In view of the above, the statement of the Director of the ZSO that, despite the instructions of most educators, some students on the questionnaire indicated their names and surnames or personal data of their parents or statutory representatives, should be considered unconvincing, as no one addressed such instructions to students to a large extent.

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 deems it justified to issue the ZSO a warning in the scope of the identified violation of Art. . 6 sec. 1 lit. c in connection with Art. 5 sec. 1 lit. a regulation 2016/679.

Recital 148 of Regulation 2016/679 states that, for the enforcement of the Regulation to be more effective, infringements should be sanctioned, including administrative fines, in addition to or in place of the 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 prior breach, how the supervisory authority becomes 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.

Determining the nature of the infringement consists in determining which provision of Regulation 2016/679 has been infringed and classifying the infringement to the appropriate category of infringed provisions, i.e. those indicated in Art. 83 sec. 4 or in art. 83 sec. 5 and 6 of Regulation 2016/679. The assessment of the seriousness of the breach (e.g. low, medium or significant) is indicated by the nature of the breach as well as the scope, purpose of the processing concerned, the number of data



subjects affected and the extent of the damage they have suffered. The purpose of processing personal data is related to determining the extent to which the processing complies with the two key elements of the "purpose limitation" principle, ie determination of the purpose and compatible use by the controller or processor. When selecting a remedy, the supervisory authority takes into account whether the damage was or could be sustained due to a breach of Regulation 2016/679, although the supervisory authority itself is not competent to award specific compensation for the harm suffered. By marking the duration of the breach, it can be stated that it was immediately removed, how long it lasted, which in turn allows for the assessment of e.g. the purposefulness or effectiveness of the administrator's or processor's actions. The Article 29 Working Party in the Guidelines on the application and setting of administrative fines for the purposes of Regulation 2016/679 adopted on 3 October 2017 with reference to the intentional or unintentional nature of an infringement indicated that, in principle, "intention" encompasses both knowledge and intent. due to the characteristics of a prohibited act, while "inadvertent" means no intention to cause an infringement, despite the controller or processor's failure to fulfill the legally required duty of care. Intentional violations are more serious than unintentional violations and, consequently, more often involve the imposition of an administrative fine.

The President of the Personal Data Protection Office decided that, in the established circumstances of the present case, issuing a reminder to the ZSO is a sufficient measure. The President of the Personal Data Protection Office decided that the abovementioned the breach was unintentional. ZSO immediately took a number of corrective measures, such as: destruction of the survey forms or its failure by some teachers, organizing training of ZSO employees in order to raise their awareness in the field of personal data protection, as well as analyzing the event, which was conducting a survey among students due to the risk of violating the rights and freedoms of natural persons. Moreover, on the basis of the circumstances of the case at hand, there are also no grounds to believe that the data subjects suffered damage as a result of the event.

The President of the Personal Data Protection Office did not receive any other signals that similar infringement behaviors would take place from the ZSO. The event therefore concerns a one-off incident, and not a systematic act or omission that would pose a serious threat to the rights of people whose personal data are processed by the ZSO. The above circumstances justify issuing the ZSO a reprimand for the violation found, taking into account the possibility of avoiding similar events in the future.

It should be noted that in the event of a similar event occurring in the future, each admonition issued by the President of the

Personal Data Protection Office against the ZSO 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 sentence.

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.

They receive:

Complex of Secondary Schools in D.

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2020-07-22