

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

March

2022

DECISION

DKE.561.4.2022

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws 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 lit. 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) (Journal of Laws UE L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2, and in the Official Journal of the European Union L 74 of 04.03.2021, p. 35), after conducting administrative proceedings to impose an administrative fine on Mr. P. P. running a business under the name of D., President of the Office for Personal Data Protection,

reminds Mr. P. P., who runs a business under the name of D., for violating 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 (Journal of Laws UE L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2, and in the Official Journal of the European Union 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 Personal Data Protection Office in the performance of his tasks and failure to provide the President of the Personal Data Protection Office with access to personal data and information necessary to perform his tasks.

Justification

Facts

A complaint from Mr. M. Ć was received by the Office for Personal Data Protection. (hereinafter referred to as: the

"Complainant"), irregularities in the processing of his personal data by Mr. P. P. S.A., hereinafter referred to as the Company or P. S.A.

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 (reference number [...]), in a letter of [...] April 2021, asked the Entrepreneur for an opinion to the content of the complaint and to provide explanations:

when (indicate the exact date), on what legal basis (indicate a specific legal provision / s), for what purpose and to what extent (please list the categories / types of data), the personal data of the Complainant was obtained, whether, and if so, on what legal basis (indicate the specific legal provision / s), for what purpose, to what extent (specify the categories / types of data) processed or currently processing the complainant's personal data, if and if so, on what legal basis (please indicate the specific legal provision / s), for what purpose, to what extent (please list the categories / types of data) made the personal data of the Complainant available to third parties.

In response to the call, the Entrepreneur in a letter received by the Office [...] in June 2021 indicated that he did not process any personal data of the Complainant and explained that he had made a mistake in entering the telephone number.

The entrepreneur, in addition, in a letter received by the Office [...] on August 2021, he explained that he did not remember when he transferred the complainant's personal data to P. S.A. and pointed out that it was the beginning of spring.

President of the Personal Data Protection Office, in connection with the receipt of the above-mentioned information, by letters of [...] August 2021 and [...] October 2021, asked the Entrepreneur to submit a copy of the document confirming the Complainant's consent to disclose his personal data to P. S.A.

The letter of [...] August 2021 was collected by the Entrepreneur [...] August 2021, and the letter of [...] October 2021 was received [...] on October 2021. For both of the letter The entrepreneur did not provide an answer.

In the above-mentioned The entrepreneur was informed in the letters that the lack of an exhaustive answer to the summons may result - in accordance with Art. 83 sec. 4 lit. a) or 83 sec. 5 lit. e) of Regulation 2016/679 - imposing an administrative fine on the Entrepreneur for a breach of failure to cooperate with the President of the Personal Data Protection Office in the performance of his tasks and failure to provide access to personal data and information necessary for the President of the Personal Data Protection Office to perform his tasks. Due to the failure by the Entrepreneur to provide the information necessary to settle the case with reference number [...], the President of UODO, in a letter of [...] February 2022, initiated ex

officio against the Entrepreneur - pursuant to Art. 83 sec. 5 lit. e) of Regulation 2016/679 - administrative proceedings to impose an administrative fine on the Entrepreneur (reference number DKE.561.4.2022).

The letter contained an instruction on the possibility of imposing on the Entrepreneur - 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 Personal Data Protection Office as part of 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 Personal Data Protection Office to perform his tasks (Article 58 par. 1 (a) and (e) of Regulation 2016/679).

In the above-mentioned In writing, the Entrepreneur was also informed that if he provided exhaustive explanations in the procedure with reference number [...], to be provided by the President of the Personal Data Protection Office and justify the previous failure to respond to these calls, this circumstance in the proceedings with reference number DKE.561.4.2022. may have a mitigating effect on the size of the administrative fine or may result in waiving its imposition.

The above facts of the case were determined by the President of the Personal Data Protection Office on the basis of all official correspondence between the Entrepreneur and the President of the Personal Data Protection Office, contained in the files of the proceedings with reference number [...]. This correspondence reflects the entirety of the attempts by the President of the Personal Data Protection Office to obtain access to information necessary for the performance of his tasks, i.e. in this case - to consider the case number [...], and on the other hand - the Entrepreneur's reaction to the requests of the President of the Personal Data Protection Office.

In response to the letter informing about the initiation of the procedure to impose an administrative fine on the Entrepreneur, the Entrepreneur submitted explanations that allowed the President of the Personal Data Protection Office to conduct further proceedings in the case no. [...]. Namely, the Entrepreneur's letter, received by the Office [...] on March 2022, shows that the Entrepreneur did not have consent to transfer the complainant's personal data to P. S.A. The entrepreneur indicated that, by mistake, he provided the Complainant's personal data, which he obtained on the basis of an agreement concluded with the Complainant for the sale of its products on the website [...]. The complainant's personal data obtained in this way was included by mistake in the form available on the website [...]. This form was to include the personal data of another person. The letter was accompanied by a screenshot of the Complainant's order for [...].

In addition, the Entrepreneur also justified the reasons for his silence in the proceedings with reference number [...] believed by

the President of the Personal Data Protection Office. The entrepreneur indicated that his silence in the proceedings under reference number [...] was caused by a misunderstanding of their content. The entrepreneur was convinced that he had already answered the question asked by the President of the Personal Data Protection Office.

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

Legal justification

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 Entrepreneur - the complainant's personal data administrator - as a party to the proceedings conducted by the President of the Personal Data Protection Office (UODO) no. [...] 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 about the initiation of administrative proceedings in the case No. DKE.561.7.2022, the Entrepreneur 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 Entrepreneur's actions certainly resulted in the lack of access to evidence indicating the legality and lawfulness of the Entrepreneur's processing of the Complainant's personal data. The justification provided by the Entrepreneur for the lack of response to the requests of the President of the Personal Data Protection Office does not remove the responsibility for the failure. However, the reasons for the lack of cooperation with the supervisory authority indicated by the Entrepreneur had to be considered as reliable and having a significant impact on the assessment of the Entrepreneur's behavior in the context of the choice of the sanction applied to him in this proceeding.

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 Entrepreneur's failure to respond to calls for

explanations was not intentional but resulted from a misunderstanding of their content. In the course of these proceedings, the Entrepreneur expressed a willingness to cooperate with the President of the Personal Data Protection Office in order to remove the violation consisting in particular in failure to provide explanations in the case under reference number [...], justifying the lack of this cooperation with a misunderstanding of the content of the summons addressed to the Entrepreneur, to which - as he was convinced - he had already answered. The entrepreneur was interested in the case. He made attempts to contact the Office by phone in order to provide explanations necessary to continue the proceedings under reference number [...], as well as he explained why he was silent in these proceedings. The Entrepreneur's behavior does not prove that the Entrepreneur intentionally avoids responses to the summons addressed to him by the President of the Personal Data Protection Office, but about his life awkwardness and misunderstanding of the content of these summons.

In the opinion of the supervisory body, the Entrepreneur's follow-up, asset-based attitude indicates readiness for further cooperation with him. At this point, it should also be noted that the very initiation of the procedure for the imposition of an administrative fine and the real perspective of imposing a financial penalty have become a clear signal for the Entrepreneur that further evasion 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.

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 occurring in the future, each reminder issued by the President of the Personal Data Protection Office against the Entrepreneur 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.

Instruction

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 of 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.

2022-05-09