

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

September

2020

## DECISION

DKE.561.4.2020

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256) and Art. 7 sec. 1 and 2 and article. 60 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), after conducting administrative proceedings initiated ex officio on the imposition of an administrative penalty on an orphanage [...] in S. pecuniary interest for violation of Art. 58 sec. 1 lit. a) and e) 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 regulation on data protection) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended) (hereinafter referred to as "Regulation 2016/679"), consisting in failure to provide the information necessary to the President of the Office for Personal Data Protection to implement its tasks, the President of the Personal Data Protection Office, discontinues the proceedings

## JUSTIFICATION

The Office for Personal Data Protection [...] January 2019 received a notification of a personal data breach, submitted by the Director of the Orphanage [...] in S. (hereinafter also referred to as: the "Administrator"). The infringement taking place on [...] January 2019 at [...], consisted in obtaining by an unauthorized person unauthorized access to the Administrator's e-mail address: [...], where unencrypted information and documents containing personal data of charges and employees of the facility, as well as entities cooperating with it, were stored. The breach occurred as a result of breach of security by an unidentified person logging into the Administrator's e-mail from an unknown computer IP address. As undisputedly established, an unauthorized user read the content of one e-mail, the content of which did not - according to the Administrator - result in a high risk of violating the rights or freedoms of natural persons. Therefore, the persons whose personal data may have been disclosed have not been notified of the breach. Nevertheless, at the time of submitting the notification, the Administrator was

not able to clearly assess whether the person who obtained access to his e-mail was viewing documents or information containing personal data, constituting the content of other e-mail messages stored in the e-mail box or their attachments. The administrator indicated that the violation concerned a total of 104 persons, and the scope of the personal data affected by the violation included: first and last names, parents' names, dates of birth, addresses, e-mail addresses, names and surnames of legal guardians and data of special categories, i.e. data on health and the content of juvenile court decisions. The incident bore the features of a prohibited act, therefore the Administrator [...] notified the competent law enforcement authorities of the incident on [...] January 2019. As part of the actions aimed at removing the violation, the Administrator changed the password to access the e-mail and declared the intention to use IT support in order to detect malware and determine any additional security measures. Moreover, the Administrator signaled the introduction of encryption of documents sent electronically, conducting additional training in the field of personal data protection for employees of the Orphanage and conducting a threat and risk analysis.

Due to the necessity to complete the notification and obtain additional information necessary for the data protection authority to assess the breach described, the President of the Personal Data Protection Office (hereinafter also referred to as the "President of the Personal Data Protection Office"), as part of the initiated administrative procedure with reference number [...], in a letter of [...] December 2019, he requested the Administrator to provide - within 7 days - the following explanations: at what date was the training in the field of personal data protection conducted for employees employed at the Controller's facility;

whether additional security measures for IT systems have been introduced;

whether a risk analysis has been performed and;

whether the preparatory proceedings conducted by the Police Station in S. have been completed, and if so, with what effect, in particular whether it has been established which correspondence has been accessed by the person who logged in to the Administrator's official e-mail.

At the same time, the Administrator was informed that failure to provide explanations in the above-mentioned scope may result in the imposition of an administrative fine in accordance with Art. 83 sec. 5 lit. e) Regulation 2016/679. The aforementioned letter, sent via the electronic Platform of Public Administration Services (ePUAP) to the address of the Administrator's individual inbox, i.e. [...], was properly delivered to the Administrator on [...] December 2019 at 11:32, which is confirmed by the

official confirmation of submission (UPP) of the correspondence automatically generated by the system. Despite the correctness of the delivery of the summons, the Administrator did not provide any answer to it, therefore the President of the Personal Data Protection Office (UODO) again in a letter of [...] January 2020, asked him to submit appropriate explanations, this time, however, setting a 3-day deadline for responding to such formulated request. The letter in question, delivered to the Administrator via the ePUAP platform on the day of posting at [...] also remained unanswered.

In connection with the above, the President of the Personal Data Protection Office (UODO) initiated these proceedings ex officio, with reference number DKE.561.4.2020. [...] on the imposition of an administrative fine on an orphanage [...] in S. for violation of Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679, consisting in failure to provide the information necessary to the President of the Data Protection Office for the performance of his tasks, i.e. for substantive settlement of the case No. [...]. The Administrator was informed about the initiation of the procedure by letter of [...] May 2020, delivered to him via the ePUAP platform. At the same time [...] June 2020 (after prior telephone consultation with the Administrator's employee, Ms B. R.), information about the initiation of the procedure was provided to the Administrator via e-mail to the e-mail address provided by him: [...].

In response to the letter informing about the initiation of administrative proceedings with reference number DKE.561.4.2020. [...] The administrator, in a letter of [...] June 2020, sent via the Polish postal operator, requested to waive the penalty. At the same time, the above-mentioned provided extensive explanations for the case with reference number [...] and indicated the reasons for prior failure to cooperate with the supervisory authority, arguing in particular that:

The administrator did not respond within the time limit set by the President of UODO to the letters addressed to him in the case with reference number [...], because he had no knowledge of the correspondence in question. The first information about the requests for explanations sent via e-PUAP from [...] December 2019 and [...] January 2020 was obtained by the administrator only during the procedure initiated ex officio to impose an administrative fine.

Immediately after receiving the above-mentioned message, in order to explain the reasons for the inability to receive correspondence sent to the e-mail address of the inbox, the Administrator asked for technical support from the IT department of the parent body. After carrying out the relevant checking activities, it was found that the so-called "Default" mailbox - hence logging in to the electronic inbox, the Administrator had a direct view of only those messages that were sent to the "Default" mailbox (the last of which was dated [...] February 2019), but did not have in the main window preview of correspondence sent

to other boxes. It was only as a result of the described IT intervention that the Administrator learned about the possibility of changing the existing parameters of the box by selecting "ESP Composition". Changing the settings allowed for the conclusion that the locker contained letters of the President of the Personal Data Protection Office (UODO), previously sent and properly delivered to the Administrator. Lack of specialist knowledge in the field of e-PUAP platform operation and constant IT support resulted in the inability to read them in advance, and thus - timely response to their content.

The most probable cause of this state of affairs was an update of the e-PUAP mailbox, which changed the settings and automatically displayed the correspondence sent to the "Default" mailbox in the main window of the browser. Therefore, the lack of response to the letters addressed to the Administrator did not result from bad will, neglect or disregard of the obligation to provide the President of the Personal Data Protection Office with information necessary for the performance of his tasks - in this case, to the substantive resolution of the case No. [...] - and only due to the Administrator's lack of awareness and ignorance that any correspondence in this matter was addressed to him via the e-PUAP mailbox. The above is compounded by the fact that the existing contacts with the supervisory authority regarding the infringement being the subject of proceedings under reference number [...], they took place either by phone or by correspondence sent via the Polish postal operator.

Responding to the questions of the supervisory authority, contained in the letters of [...] December 2019 and [...] January 2020, the Administrator indicated that the training in the field of personal data protection was conducted for employees of the Administrator's unit on [...] February 2019 (as proof of which, the Administrator presented a certified copy of the attendance list of people participating in the training, certified as a true copy of the original).

Immediately after the violation was discovered, i.e. [...] January 2019, the Administrator's e-mail password was changed at: [...], the encryption of documents sent electronically was implemented and separate accounts were introduced for users using the general e-mail account of the Orphanage [ ...] in S.

The administrator has implemented appropriate technical and organizational measures to protect personal data, preventing unauthorized persons from accessing the processed data, consisting in: introducing external and internal monitoring of the unit, using anti-virus programs, introducing security passwords to operating and domain systems, and also: implementing a change policy in the unit passwords, procedures for accessing IT systems, procedures defining the rules of using the Internet and e-mail, granting employees authorizations to process personal data, introducing a clean desk policy, key policy or implementing secure document storage methods. In addition to the above-mentioned measures, the Administrator also

appointed the Data Protection Officer, implemented the Personal Data Protection Policy in the unit and conducted [...] June 2019 a risk analysis.

The criminal proceedings initiated by the notification of the suspicion of committing a crime submitted by the Administrator to the Police Station in S. has not been legally concluded. By the judgment of the District Court in M. of [...] January 2020, issued in the case file ref. act [...], the perpetrator of the infringement, Mr. K. P., was found guilty of the alleged offense under Art. 267 § 1 of the CC At the same time, due to the insignificant degree of social harmfulness of the act, the court conditionally discontinued the criminal proceedings against the accused for a period of one year of probation, adjudicating against him an obligation to pay a premium in the amount of PLN 300 to the Administrator.

To the written explanations of [...] June 2020, the Administrator attached a number of evidence confirming the truthfulness of his statements, in the form of, inter alia, certified true copies of the ordinances of the director of the Orphanage in S., including: ordinance No. [...] of [...] July 2018 on the appointment of the Data Protection Officer, ordinance No. [...] of [...] September 2018 on the implementation of the Data Protection Policy, ordinance No. [...] of [...] December 2018 on the introduction of the Regulations for the functioning, operation and operation of video monitoring in the orphanage, ordinance No. [...] of [...] April 2019 in on the updating of authorizations to process personal data, ordinance No. [...] of [...] December 2019 on the update of the Register of personal data processing activities and a note of [...] June 2019 documenting the risk analysis performed. After reviewing all the evidence collected in the present case, the President of the Data Protection Office considered the following.

Pursuant to Art. 57 sec. 1 lit. a) Regulation 2016/679, the President of the Personal Data Protection Office, 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 competences, the President of the Personal Data Protection Office is entitled, inter alia, to conduct proceedings on the application of the provisions of the legal act in question (Article 57 (1) (h)), including proceedings related to the assessment of personal data breaches, reported to the President of the Personal Data Protection Office by data administrators, pursuant to Art. 33 of the Regulation 2016/679. In order to enable the performance of such defined tasks, the President of the Personal Data Protection Office has a number of specific rights in the scope of conducted proceedings, including the right to order the controller and the processor to provide all the 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)). 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 rights specified in art. 58 sec. 1 (including the right to obtain data and information necessary to perform its tasks), and may be subject - in accordance with art. 83 sec. 5 letter e) in fine of the Regulation 2016/679 in connection with art. 102 paragraph 1 and 3 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o." - an administrative fine of up to PLN 100,000.

At the same time, pursuant to art. 16 sec. 1 of the Act of February 17, 2005 on the computerization of the activities of entities performing public tasks (Journal of Laws of 2020, item 346, as amended), public entities, organizing data processing in the ICT system, are obliged to provide data also in electronic form through the exchange of electronic documents related to the handling of matters falling within their scope of operation, using IT data carriers or electronic means of communication. In turn, art. 16 sec. 1a above. of the legal act imposes an obligation on public entities to provide an electronic inbox that meets the standards specified and published on ePUAP by the minister responsible for computerization and to ensure its service.

Thus, the Orphanage [...] in S., which is a budgetary unit operating on the principles set out in the Public Finance Act - which results from the Statute of the above-mentioned entity, granted by Resolution No. [...] of the Poviát Council in M. of [...] June 2006 - was obliged, as a public entity, to service the ePUAP electronic inbox on an ongoing basis and to respond to requests for explanations addressed to him through this communication channel in administrative proceedings conducted by the President of the Personal Data Protection Office under reference number [...].

However, the Administrator did not respond to the content of the letters of [...] December 2019 and [...] January 2020 and did not provide the information necessary for the substantive examination of the above-mentioned case, it should be indicated that this action was not intentional, nor was it aimed at deliberately hindering the performance of his tasks by the President of the Personal Data Protection Office. The administrator had no knowledge of the correspondence sent via ePUAP, imposing an obligation on him to take specific action, and above all to cooperate with the data protection authority. The lack of reaction to the letters addressed to the Administrator was caused by the ignorance of the functionality of the ePUAP platform and the possible system update, which could have a significant impact on the inbox settings, but it was not due to the Administrator's bad will. The evidence for the above is the fact that immediately after learning about the obligation to provide explanations - which only took place in the course of the proceedings aimed at imposing an administrative fine - the Administrator explained

in detail the reasons for which he had previously failed to comply with the provisions of Regulation 2016/679 of the obligation to cooperate with the supervisory body, and also provided comprehensive explanations in the proceedings with reference number [...], The lack of which was the basis for the initiation of these proceedings. It should also be noted that the correspondence with the supervisory body concerned the breach of personal data protection reported by the Administrator, about which the Administrator notified the President of the Personal Data Protection Office within 72 hours of its finding, providing all the information he had at his disposal, required under Art. 33 paragraph 3 of the Regulation 2016/679.

Considering the fact that the Administrator made the notification voluntarily, in accordance with the applicable law, there are no grounds to believe that he intentionally refrained from providing the President of the Personal Data Protection Office with further information necessary to assess the violation in question. Due to the fact that in the letter of [...] June 2020, all data necessary for the substantive examination of the case no. [...], it should therefore be stated that the reason justifying the initiation of ex officio proceedings on the imposition of an administrative fine for violation of Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679, consisting in failure to provide the information necessary to the President of the Data Protection Office for the performance of his tasks.

For the above reasons, it should be stated that the proceedings conducted in the present case became redundant, and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Civil Procedure

Pursuant to the above-mentioned provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, respectively, in whole or in part. As it results from the aforementioned regulation, the finding that the procedure is groundless is an obligatory premise for its discontinuation and is not dependent on the will of the authority conducting the procedure. The prerequisite for discontinuation of the proceedings may exist even before its initiation, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in the case already pending before the administrative authority (as was the case in the facts described in this case). ). At the same time, the literature on the subject indicates that: "The objectivity of the proceedings may result from a change in the facts of the case. The proceedings must be deemed to be groundless due to the cessation of the facts subject to regulation by the administrative authority by way of a decision (see the justification of the judgment of the Supreme Administrative Court of 29 September 1987, IV SA 220/87, ONSA 1987, No. 2, item 67 "- Przybysz Piotr Marek. Art. 105. In: Code of Administrative Procedure. Updated comment. Legal Information System LEX, 2019).

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 Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The entry fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-02-03