

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

of December

2020

DECISION

DKE.561.13.2020

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended), art. 7 section 1 and section 2, art. 60, art. 101, art. 103 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), art. 83 sec. 1-3, art. 83 sec. 5 lit. e) in connection with Art. 31, art. 58 section 1 lit. e), art. 58 sec. 2 lit. i) 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"), after conducting administrative proceedings initiated ex officio on the imposition of Smart Cities Sp. z o.o. with headquarters in Warsaw at ul. Krucza 16-22, an administrative fine, President of the Office for Personal Data Protection,

finding a breach by Smart Cities Sp. z o.o. the provisions of Art. 31 and art. 58 sec. 1 lit. e) 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 failure to provide access to personal data and other information necessary for the President of the Office for Personal Data Protection to perform his tasks,

imposes on Smart Cities Sp. z o.o. with headquarters in Warsaw at ul. Krucza 16-22, an administrative fine in the amount of PLN 12,838.20 (say: twelve thousand eight hundred and thirty-eight zlotys and twenty groszy).

JUSTIFICATION

The Personal Data Protection Office received a complaint from Mr. K. T., residing in in W. (hereinafter referred to as the "Complainant"), irregularities in the processing of his personal data by Smart Cities Sp. z o.o. with headquarters in Warsaw at ul. Krucza 16-22 (hereinafter referred to as the "Company"). 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 [...] June 2019, asked the Company to comment on the content of the complaint and to answer the following specific questions about the case:

- 1) whether, and if so, on what legal basis, for what purpose and to what extent the Company processes the complainant's personal data,
- 2) on what legal basis, to what extent and for what purpose, the Company provided the complainant's personal data to A. S.A.,
- 3) whether the Company concluded with A. S.A. an agreement for entrusting the processing of personal data (in the event of a positive answer to this question, the Company was requested to present a contract for entrusting the processing of personal data).

In response to the above-mentioned request, the President of the Management Board of the Company, in a letter of [...] August 2019, provided the President of the Personal Data Protection Office with incomplete explanations, and therefore did not provide a basis for the data protection authority to consider the above-mentioned complaints.

The President of the Personal Data Protection Office, deeming the above explanations of the Company insufficient, in a letter of [...] May 2020, asked the Company to supplement them by:

- 1) an indication of the specific processing purposes for which the agreement was concluded of [...] May 2018;
- 2) submission of documents to the proceedings files that define the purposes of personal data processing, covered by the agreement of [...] May 2018, and in particular:
 - a) main contracts concluded between Smart Cities Sp. z o.o. and A. S.A. ;
 - b) documents specifying cooperation between Smart Cities Sp. z o.o. and A. S.A.

The letter was delivered to the Company, which was confirmed on the confirmation of receipt of the letter-post item (recipient's signature, without specifying the date of receipt of the letter-post item). The Company did not reply to this letter. Therefore, on [...] August 2020, a letter was sent to the Company with another summons to immediately submit additional explanations on the matter. On [...] September 2020, this letter was returned to the sender with the annotation "the return was not collected on time". In a letter of [...] August 2020, the Company was informed that failure to respond to the requests of the President of the Personal Data Protection Office may result - in accordance with Art. 83 sec. 5 lit. e) in connection with joke. 58 sec. 1 lit. a) Regulation 2016/679 - imposing an administrative fine on the Company.

Due to the failure by the Company to provide complete information necessary to resolve the case no. [...], initiated by the

complainant's complaint, the President of the Personal Data Protection Office (UODO) initiated ex officio against the Company - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679, due to the breach by the Company of art. 31 and art. 58 sec. 1 letter a) and e) of the Regulation 2016/679 - administrative proceedings to impose an administrative fine on the Company (reference number DKE.560.13.2020.DS). The Company was informed about the initiation of the procedure by letter of [...] September 2020, which on [...] October 2020 was returned to the sender with the annotation "the return has not been received on time". The letter was also summoned to the Company - in order to establish the basis for the penalty, pursuant to Art. 101a paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) - to present the Company's financial statements for 2019 or - in the absence thereof - a statement on the amount of turnover and financial result achieved by the Company in 2019

Until the date of this decision, the Company has not provided the information necessary to consider the case no. [...]. The company also did not respond to the letter informing about the initiation of the procedure, ref. No. DKE.560.13.2020 on imposing an administrative fine on the Company.

After considering all the evidence collected in the case, the President of UODO 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 examines, inter alia, Complaints brought by data subjects shall investigate these complaints to the 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 rights in the scope of conducted 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)). 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) 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 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 body in the performance of its tasks (Article 31), and is subject - in accordance with art. 83 sec. 4 lit. a) 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 being:

Pursuant to Art. 83 sec. 3 of Regulation 2016/679, if the controller or processor intentionally or unintentionally infringes several provisions of this Regulation within the same or related processing operations, the total amount of the administrative fine shall not exceed the amount of the fine for the most serious breach.

Referring the above-mentioned provisions of the Regulation 2016/679 to the facts established in this case, and described at the beginning of this decision, it should be stated that the Company - the administrator of the complainant's personal data, Mr. K. T. - as a party to the proceedings conducted by the President of the Personal Data Protection Office (UODO) No. [...], breached its 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 this case. Such activity of the Company constitutes a violation of Art. 58 sec. 1 lit. e) Regulation 2016/679.

In the proceedings with reference number [...] The President of the Personal Data Protection Office (UODO) called the Company three times to provide explanations necessary to consider the case. The response of the Company to the first request of the President of the Personal Data Protection Office (of [...] June 2019) was far from complete (no comprehensive answer to any of the three detailed questions asked in the letter of the President of the Personal Data Protection Office) and so far has not given the possibility of full and thorough consideration by the security authority complaint data of the data subject. Subsequent letters sent to her by the President of UODO (of [...] May 2020 and [...] August 2020), the Company did not receive and did not respond to the President of UODO.

The above-described proceedings of the Company in the case no. [...] (providing incomplete answers to specific, not very complicated and not requiring specialist knowledge in the field of personal data protection, questions from the President of the Personal Data Protection Office and no response to subsequent requests of the President of the Personal Data Protection Office (UODO) addressed to the Company to supplement the evidence in the case) indicates a lack of will to cooperate with The President of the Personal Data Protection Office in determining the facts of the case and its correct resolution, or at least

blatantly disregarding his obligations regarding cooperation with the President of the Personal Data Protection Office as part of his tasks specified in Regulation 2016/679. The above statement is additionally justified by the fact that the Company in no way tried to justify the fact that there was no response to the two requests for explanations, nor did it contact the Office for Personal Data Protection in order to signal any doubts that it might have regarding the scope of information requested by the President. UODO.

It should be pointed out here that obstructing and preventing access to information requested and requested by the President of the Personal Data Protection Office, and which are undoubtedly in the possession of the Company (e.g. concerning the main contracts referred to in the letter of [...] August 2019, concluded between Smart Cities Sp. Z oo and ASA), prevents a thorough examination of the case, and also results in excessive and unjustified prolongation of the proceedings, which is contrary to the basic principles governing administrative proceedings - specified in Art. 12 sec. 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended), the principles of insight and speed of proceedings. In addition, the Company is obliged to cooperate with the supervisory body as part of its tasks, as provided for in Art. 31 of Regulation 2016/679.

Considering the above findings, the President of the Personal Data Protection Office states that in the present case there are premises justifying the imposition on the Company - pursuant to Art. 83 sec. 5 lit. e) in fine and art. 83 sec. 4 lit. a) Regulation 2016/679 - an administrative fine due to the lack of will to cooperate with the supervisory body as part of the performance of its tasks (Article 31) and due to the Company's failure to provide access to information necessary for the President of the Personal Data Protection Office to perform its tasks (Article 58 (1) (e), that is until the settlement of the case with reference number [...].

Pursuant to art. 83 sec. 2 of Regulation 2016/679, administrative fines are imposed depending on the circumstances of each individual case. It refers in each case to a number of circumstances listed in points a) to k) of the above-mentioned provision. When deciding to impose an administrative fine on the Company and determining its amount, the President of the Personal Data Protection Office (UODO) took into account the following circumstances aggravating the assessment of the infringement: Nature, gravity and duration of the infringement (Article 83 (2) (a) of Regulation 2016/679).

The breach liable to an administrative pecuniary penalty in the present case undermines the system designed to protect one of the fundamental rights of a natural person, which is the right to the protection of his personal data, or more broadly, to the

protection of his privacy. An important element of this system, the framework of which is set out in Regulation 2016/679, are supervisory authorities with tasks related to the protection and enforcement of the rights of natural persons in this respect. In order to enable the performance of these tasks, supervisory authorities have been equipped with a number of control powers, powers to conduct administrative proceedings and remedial powers. On the other hand, administrators and processors have been imposed specific obligations, correlated with the powers of supervisory authorities, including the obligation to cooperate with supervisory authorities and the obligation to provide these authorities with access to information necessary for the performance of their tasks. The actions of the Company in the present case, consisting in hindering and preventing access to information requested by the President of the Personal Data Protection Office, and resulting in hindering and unjustified extension of the proceedings conducted by him, should therefore be considered as detrimental to the personal data protection system, and therefore of great importance and reprehensibility nature. The significance of the breach is additionally increased by the fact that the breach by the Company was not an incidental event; the company's operation was continuous and long-term. It lasts from the expiry of the deadline for the submission of explanations, i.e. from [...] May 2020 until now.

2. Intentional nature of the breach (Article 83 (2) (b) of Regulation 2016/679).

In the opinion of the President of the Personal Data Protection Office, the Company lacks the will to cooperate in providing the authority with all information necessary to resolve the case in the course of which the authority requested it. This is evidenced in particular by the lack of any response to two out of three requests from the President of the Personal Data Protection Office (UODO) addressed to her. Also, the incomplete explanations that the Company submitted to the President of the Personal Data Protection Office in response to the first letter addressed to it indicate a lack of will to cooperate with the authority or at least blatant disregard of its obligations related to this cooperation. It should be emphasized that the Company at no stage of the proceedings with reference number [...], As well as in the present proceedings, did not make an attempt to justify such conduct. Considering that the Company is an entrepreneur, an entity professionally involved in legal and economic transactions, it should also be assumed that it was (and is still) aware that its action of not taking correspondence of the President of the Personal Data Protection Office (UODO) before the President of the Personal Data Protection Office (UODO), administrative proceedings with reference number [...] to which the Company is a party) constitute a breach of the basic obligations of the entrepreneur, in particular the obligations arising from Regulation 2016/679.

3. Lack of cooperation with the supervisory authority to remove the breach and mitigate its possible negative effects (Article 83

(2) (f) of Regulation 2016/679.

In the course of these proceedings (DKE.560.13.2020) regarding the imposition of an administrative fine, the Company did not provide supplementary explanations to the case with reference number [...], which still significantly hinders the President of the Personal Data Protection Office from issuing a decision in this case.

The other conditions for the assessment of an administrative fine specified in Art. 83 sec. 2 of Regulation 2016/679 did not affect (aggravating or mitigating) the assessment of the infringement made by the President of the Personal Data Protection Office (including: any relevant prior infringements by the controller, the manner in which the supervisory authority learned about the infringement, compliance with the measures previously applied in the same case, the use of approved codes of conduct or approved certification mechanisms) or, due to the specific nature of the breach (relating to the controller's relationship with the supervisory authority and not the controller's relationship with the data subject), could not be taken into account in the present case (including: the number of injured persons and the extent of the damage suffered by them, actions taken by the administrator to minimize the damage suffered by data subjects, the degree of administrator's liability, taking into account the technical and organizational measures implemented by him, categories of personal data affected by the infringement *zenie*).

Pursuant to the wording of art. 83 sec. 1 of Regulation 2016/679, the administrative fine imposed by the supervisory authority should be effective, proportionate and dissuasive in each individual case. In the opinion of the President of the Personal Data Protection Office, the penalty imposed on the Company in these proceedings meets these criteria. It will discipline the Company to properly cooperate with the President of the Personal Data Protection Office, both in the further course of the proceedings with ref. No. [...], as well as in any possible other future proceedings with the participation of the Company before the President of the Personal Data Protection Office. The penalty imposed by this decision is - in the opinion of the President of the Personal Data Protection Office - proportional to the severity of the breach found and the possibility of incurring it by the Company without major detriment to its activities. Moreover, this penalty will have a deterrent function; will be a clear signal both for the Company and for other entities obliged under the provisions of Regulation 2016/679 to cooperate with the President of the Personal Data Protection Office that disregarding the obligations related to cooperation with him (in particular, obstructing access to information necessary for the performance of his tasks) is a violation of significant and as such will be subject to financial sanctions. It should be noted here that the imposition of an administrative fine on the Company is - in view

of the Company's conduct to date as a party to the proceedings [...] - necessary; is the only measure at the disposal of the President of the Personal Data Protection Office, which will enable access to information necessary in the conducted proceedings.

Due to the fact that the Company did not present the financial data requested by the President of the Personal Data Protection Office for 2019, when determining the amount of the administrative fine in this case, the President of the Personal Data Protection Office took into account, pursuant to Art. 101a paragraph. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the estimated size of the Company and the specificity, scope and scale of its operations.

Pursuant to art. 103 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the equivalent of the amounts expressed in euro, referred to in Art. 83 of the Regulation 2016/679, are calculated in PLN according to the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table on January 28 of each year, and if the National Bank of Poland does not announce the average EUR exchange rate on January 28 in a given year - according to the average euro exchange rate announced in the table of exchange rates of the National Bank of Poland that is closest after that date.

Bearing in mind the above, the President of the Personal Data Protection Office, pursuant to art. 83 sec. 3 and art. 83 sec. 4 letter a) and art. 83 sec. 5 lit. e) of Regulation 2016/679, in connection with Art. 103 of the Act on the Protection of Personal Data of 2018, for the violations described in the operative part of this decision, imposed on the Company - using the average EUR exchange rate of January 28, 2020 (EUR 1 = PLN 4.2794) - an administrative fine in the amount of 12,838.20 PLN (equivalent to EUR 3,000), according to the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table as of January 28, 2020.

Considering the above, the President of UODO ruled as in the conclusion of this decision.

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). A proportional fee should be filed against the complaint, 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). Pursuant to Art. 74 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781),

the submission of a complaint by a party to the administrative court suspends the execution of the decision on the administrative fine.

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.

Pursuant to Art. 105 paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the administrative fine must be paid within 14 days from the date of expiry of the deadline for lodging a complaint to the Provincial Administrative Court, or from the date the ruling of the administrative court becomes legally binding, to the bank account of the Personal Data Protection Office at NBP O / O Warsaw No. 28 1010 1010 0028 8622 3100 0000. Moreover, pursuant to Art. 105 paragraph. 2 of the above-mentioned Act, the President of the Personal Data Protection Office may, at a justified request of the punished entity, postpone the payment of the administrative fine or divide it into installments. In the event of postponing the payment of the administrative fine or dividing it into installments, the President of the Personal Data Protection Office shall charge interest on the unpaid amount on an annual basis, using a reduced rate of late payment interest, announced pursuant to Art. 56d of the Act of August 29, 1997 - Tax Ordinance (Journal of Laws of 2019, item 900, as amended), from the day following the date of submitting the application.

2021-01-13