

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 07

September

2021

DECISION

DKE.561.12.2021

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) 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. 31 and art. 58 sec. 1 lit. a) and lit. e) in connection with Art. 58 sec. 2 lit. b) Regulation of the European Parliament and 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 to impose an administrative fine on Mr. M. B. running a business under the name of [...], President of the Office for Personal Data Protection ,

reminds Mr. M. B. running a business under the name of [...] 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 (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 the lack of cooperation with the President of the Personal Data Protection Office as part of the tasks and failure to provide information necessary for the President of the Personal Data Protection Office to perform his tasks.

Justification

The Office for Personal Data Protection received a complaint from Ms A. S. (hereinafter: "the Complainant") about irregularities in the processing of her personal data by Mr. M. B. running a business under the name of [...] (hereinafter referred to as the "Entrepreneur").

The President of the Personal Data Protection Office (hereinafter referred to as the "President of the Personal Data Protection

Office"), as part of the administrative procedure initiated in order to consider the submitted complaint (reference number [...]), by letter of [...] March 2021, addressed the Entrepreneur (correspondence address according to CEIDG Entrepreneurs, that is: [...]) to respond to the content of the complaint and to answer the following detailed questions regarding the case:

if, and if so, on what legal basis (please indicate a specific legal provision), for what purpose and to what extent and from what source you obtained the complainant's personal data;

if, and if so, on what legal basis (please indicate a specific legal provision), for what purpose and to what extent you process the complainant's personal data;

did the complainant ask you to delete her personal data, and if so, to what extent and how did you respond to this request (please send a copy of any correspondence)? If the complainant has not been given an answer, please explain the reasons for this.

This letter, after two notifications, returned to the Office for Personal Data Protection (hereinafter referred to as "UODO") with the annotation "the return was not made on time". Therefore, in a letter of [...] May 2021, a letter was sent to the Entrepreneur again, summoning him to provide immediate explanations on the matter. This letter, also after being notified twice, was returned to the Personal Data Protection Office with the annotation "the return was not made on time". Therefore, the above-mentioned the letters were considered delivered to the Entrepreneur in accordance with Art. 44 § 4 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended) (hereinafter referred to as "k.p.a.").

In a letter of [...] May 2021, the entrepreneur 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) and lit. e) of Regulation 2016/679 - imposing an administrative fine on the Entrepreneur.

Due to the failure by the Entrepreneur to provide the information necessary to settle the case with reference number [...], initiated by the complainant's complaint, the President of the Personal Data Protection Office (UODO) initiated ex officio against the Entrepreneur - pursuant to Art. 83 sec. 5 lit. e) of Regulation 2016/679, in connection with the entrepreneur's violation of art. 31 and art. 58 sec. 1 lit. a) and e) of the Regulation 2016/679 - administrative proceedings to impose an administrative fine on the Entrepreneur (under reference number DKE.560.12.2021.DS). The entrepreneur was informed about the initiation of administrative proceedings and the collection of evidence in the case of [...] June 2021. This letter, after two

notifications, returned to the Personal Data Protection Office with the annotation "the return was not made on time", therefore it was deemed delivered Entrepreneurs in accordance with art. 44 § of the Code of Civil Procedure By this letter, the Entrepreneur was also summoned - in order to determine 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 a financial statement or other document presenting the amount of turnover and financial result achieved by the Entrepreneur in 2020. The Entrepreneur was instructed also that in the event of failure to present the above-mentioned documents, the President of the Personal Data Protection Office will determine the penalty in an estimated manner. 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, as requested by the President of the Personal Data Protection Office and justify the previous failure to respond to these requests, this circumstance in the proceedings with reference number DKE.561.12.2021.DS may have a mitigating effect on the amount of the administrative fine or may result in waiving its imposition.

In response to the letter informing about the initiation of the procedure to impose an administrative fine on the Entrepreneur, by letter of [...] July 2021, the Entrepreneur provided exhaustive explanations which allowed the President of the Personal Data Protection Office to conduct further proceedings in case no. [...].

Moreover, in a letter of [...] August 2021, the Entrepreneur also explained that:

In the CEIDG register No. [...] concerning the business activity conducted by the Entrepreneur, there is an error in the correspondence address, about which the Entrepreneur was not aware. The correspondence address indicated in CEIDG is: [...], while the correct correspondence address is: [...].

As a result of a telephone conversation conducted on [...] August 2021 with an employee of the Personal Data Protection Office, the entrepreneur obtained information about the address to which correspondence was sent to him by the data protection authority, that is: [...]. This address as indicated above was consistent with the address indicated in CEIDG. After the conversation, the Entrepreneur electronically submitted an application to CEIDG to change the entry in the CIDG register regarding his business (No. [...]) in order to correct the address to a correct one, as proof of which the Entrepreneur attached a printout of the application for entry in the Central Register and Information on Economic Activity of [...] August 2021. On the same day, the entry in the CEIDG regarding the correspondence address was changed, that is to the address: [...], which is now reflected in the printout from the CEIDG website regarding the Entrepreneur.

In addition, the post office where the parcels to the Entrepreneur are stored changed the address from [...] to [...]. For a long time, the notices left in the Entrepreneur's mailbox had a postage stamp with the outdated address of the facility where the letter could be picked up.

As the justification for the lack of cooperation with the President of UODO, the Entrepreneur indicated that the Entrepreneur's failure to collect the correspondence could have been caused by the data protection authority addressing it to an incorrect address related to an error in the entry in the CEIDG.

In connection with the situation, the Entrepreneur apologized to the President of the Personal Data Protection Office for not cooperating with him in participating in activities related to the complainant's case.

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

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) of 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 actual state of affairs established in this case, and described at the beginning of this decision, it should be stated that the Entrepreneur - the personal data administrator of the complainant, Ms A. S., - 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 on the initiation of administrative proceedings in the case No. DKE.561.12.2021.DS, the Entrepreneurs, in a letter of [] July 2021, provided 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 requests for explanations was not deliberate.

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 providing explanations in the scope in which the conduct of the proceedings with reference number [...], justifying the lack of this cooperation by not collecting correspondence as a result of an error in the correspondence address in the Entrepreneur's entry in CEIDG.

In the opinion of the supervisory body, the Entrepreneur's successive, asset-based attitude shows the readiness to continue to cooperate 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. In order to avoid similar situations in the future, the President of the Personal Data Protection Office indicates that the Entrepreneur should immediately inform about any obstacles preventing the Entrepreneur from timely fulfillment of his obligations towards the data protection authority, as soon as they arise.

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.

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 to 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.

2021-11-02