

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 03

June

2020

DECISION

DKE.561.2.2020

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256) and art. 7 sec. 1 and sec. 2, art. 60, art. 101, art. 103 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2019, item 1781) in connection with Art. 31, art. 58 sec. 1 lit. e) in connection with Art. 83 sec. 1-3 and art. 83 sec. 5 lit. e) 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 regulation on data protection) (Journal of Laws UE L 119 of 04.05.2016, p. 1, as economic under the name [...] in Ł. of an administrative fine, the President of the Personal Data Protection Office, finding that Ms AT, conducting business activity under the name [...] in Ł., breached the provision of Art. 58 sec. 1 lit. e) of Regulation 2016/679, consisting in failure to provide access to personal data and other information necessary for the President of the Personal Data Protection Office to perform his tasks, i.e. to assess the breach of personal data protection pursuant to art. 34 sec. 1 and 2 of the Regulation 2016/679 notified by Ms A. T. running a business under the name [...] in Ł., imposes on Ms AT running a business under the name [...] in Ł. an administrative fine in the amount of PLN 5,000 (say: five thousand zlotys), which is the equivalent of EUR 1,168.39, according to the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table as of January 28, 2020

JUSTIFICATION

The Personal Data Protection Office [...] of June 2019 received a notification of a personal data breach submitted by Ms A. T. running a business under the name of [...] with a permanent place of business in Ł. (Hereinafter also referred to as: "Entrepreneur"). The breach of personal data protection consisted in the Entrepreneur losing access to personal data stored at the headquarters of the facility run by him, i.e. Non-public Nursery and Kindergarten [...], located in Ł. Intrusions of persons acting on behalf of the entity G. Spółka z ograniczoną odpowiedzialnością "Spółka Komandytowa with its seat in R.

(hereinafter also: "the Company"), into the facility during the performance of children for parents. on the closure of the facility and opening a new one in this place. The company, on an unknown date, replaced all the locks in the premises, and therefore the Entrepreneur could not open the above-mentioned facility. Inside there was closed equipment of the kindergarten, including computers and documentation containing personal data of employees, children attending kindergarten and nursery school and their legal guardians. The entrepreneur indicated that the violation concerned about 200 people and the scope of personal data mentioned above persons included: names and surnames, parents' names, date of birth, bank account number, address of residence or stay, PESEL identification number, e-mail address, series and number of ID card, telephone number. In the opinion of the Entrepreneur, there was a high risk of violating the rights or freedoms of natural persons, therefore 120 people (all legal guardians of children and employees) were notified by phone or in person about the violation.

Due to the lack of information in the notification necessary for the President of the Personal Data Protection Office to assess this breach, pursuant to art. 58 section 1 lit. a) and e) of Regulation 2016/679, by letter of [...] June 2019 (ref. Personal Data Protection (hereinafter also referred to as the "President of the Personal Data Protection Office") called on the Entrepreneur to present the anonymised content of the notification addressed to the persons concerned by the infringement, in order to determine whether the administrator, in accordance with Art. 34 sec. 1 and 2 of the Regulation 2016/679, he notified data subjects about the breach of personal data protection.

Moreover, in the letter, the President of the Personal Data Protection Office indicated to the Entrepreneur that pursuant to Art. 34 sec. 2 of Regulation 2016/679, the notification should describe the nature of the breach of personal data protection in clear and simple language and contain at least the information and measures referred to in art. 33 paragraph 3 lit. b), c) and d) of Regulation 2016/679, i.e. : 1) name and surname and contact details of the data protection officer or designation of another contact point from which more information can be obtained; 2) a description of the possible consequences of a breach of personal data protection; 3) a description of the measures taken or proposed by the controller to remedy the personal data breach, including, where appropriate, measures to minimize its possible negative effects.

The letter of [...] June 2019 (reference number [...] [...] July 2019 was returned to the sender with the annotation "the return has not been made on time." Therefore, by letter of [...] July 2019, the President UODO again asked the Entrepreneur to provide the anonymised content of the notification addressed to the persons affected by the infringement. The letter was also addressed to the Entrepreneur at the address of the permanent place of business: [...]. [...] the correspondence was returned

to the sender with the annotation " the reimbursement was not taken on time ".

The next letter of the President of the Personal Data Protection Office of [...] September 2019 was addressed both to the address of the permanent place of business: [...] and to the address for service: [...] (address for service indicated in CEiDG). The summons addressed to the Entrepreneur at the address of the permanent place of business: [...], was personally received by the Entrepreneur on [...] September 2019. It should be indicated here that the summons received by the Entrepreneur on [...] September 2019 to present an anonymised content of the notification addressed to the persons concerned by the infringement, i.e. the letter of [...] September 2019, contained information that the request was "repeated" to the Entrepreneur. On the other hand, a summons to the address for service on [...] October 2019 was returned to the sender with the annotation "addressee unknown at the address indicated". Due to the failure by the Entrepreneur to provide the information necessary to settle the case with reference number [...], the President of UODO once again, in a letter of [...] November 2019, addressed to the address of the permanent place of business, called on the Entrepreneur to present the anonymised content of the notification addressed to the persons affected by the infringement. [...] on December 2019, the correspondence was returned to the sender with the annotation "the return was not received on time". Until now, the administrator has not responded to any of the above-mentioned calls.

In a letter of [...] September 2019, 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) Regulation 2016/679 - imposing an administrative fine on him.

Due to the failure by the Entrepreneur to provide the information necessary to determine whether the administrator, in accordance with art. 34 sec. 1 and 2 of the Regulation 2016/679 notified data subjects of the breach of personal data protection, the President of the Personal Data Protection Office initiated ex officio against the Entrepreneur - pursuant to art. 83 sec. 5 lit. e) Regulation 2016/679, due to its breach of art. 58 sec. 1 letter a) and e) of Regulation 2016/679 - administrative proceedings for the imposition of an administrative fine on him (reference number [...]). The letter informing about the initiation of the procedure of [...] February 2020 was addressed to the Entrepreneur at the address of the permanent place of business: [...]. By this letter, the Entrepreneur was also summoned - in order to determine the basis of 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 submit a financial report on his business for 2019 or - in the absence of such - a statement on the amount of turnover and the financial

result achieved by him in 2019.

The letter of [...] February 2020 The entrepreneur also did not receive it. On [...] March 2020, the letter was returned to the sender with the annotation "the return has not been collected on time".

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) 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 (UODO) conducts, inter alia, proceedings on the application of Regulation 2016/679 (Article 57 (1) (h)), including proceedings on notification of a breach to a supervisory authority (Article 33 (1)). In order to enable the performance of tasks, the President of the Personal Data Protection Office is entitled to a number of provisions 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), and is subject - in accordance with art. 83 sec. 5 lit. 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 being applicable. It should also be indicated that the controller and the processor are obliged to cooperate with the supervisory authority in the performance of its tasks, as provided for in Art. 31 of Regulation 2016/679.

Referring to the above-mentioned provisions of the 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, as the administrator of personal data of employees, children attending kindergartens and nurseries and their legal guardians, processed in The non-public nursery and kindergarten [...] located in Ł., Breached his 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 assess whether the administrator, in

accordance with Art. 34 sec. 1 and 2 of the Regulation 2016/679, he notified data subjects about the breach of personal data protection. Such activity of the Company constitutes a violation of Art. 58 sec. 1 lit. e) Regulation 2016/679.

The above-described procedure of the Entrepreneur consisting in:

failure to collect the correspondence addressed to the Entrepreneur three times by the President of the Personal Data Protection Office (via Poczta Polska), despite the fact that the Entrepreneur has reported a breach of personal data protection and should expect the position of the personal data protection authority in this matter,

failure to respond to the request of the President of the Personal Data Protection Office (letter of [...] September 2019 received by the Entrepreneur on [...] September 2019) to present the anonymised content of the notification of personal data breach addressed to persons affected by the breach,

- indicates the lack of cooperation with the President of the Personal Data Protection Office in establishing 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 the performance of his tasks specified in Regulation 2016/679. The above statement is additionally justified by the fact that the Entrepreneur in no way tried to justify the fact that there was no answer to the calls to him.

It should be pointed out here that obstructing and preventing access to information that the President of the Personal Data Protection Office (UODO) demanded and requests from the Entrepreneur, and which is undoubtedly in the possession of the Entrepreneur (information on the anonymised content of the notification addressed to the persons affected by the infringement), prevents a thorough examination of the case also results in excessive and unjustified prolongation of the proceedings.

Bearing in mind 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 Entrepreneur - pursuant to Art. 83 sec. 5 lit. e) in fine of Regulation 2016/679 - an administrative fine in connection with the Entrepreneur's failure to provide access to information necessary for the President of the Personal Data Protection Office to perform his tasks, that is, to resolve the case No. [...].

Pursuant to art. 83 sec. 2 of Regulation 2016/679, administrative fines are imposed depending on the circumstances of each individual case. In each case, it refers to a number of circumstances listed in par. 2 lit. from a) to k) of the above-mentioned provision. When deciding to impose an administrative fine on the Entrepreneur 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 Entrepreneur in the present case, consisting in preventing access to the information requested by the President of the Personal Data Protection Office, and resulting in the impediment and unjustified extension of the proceedings conducted by this authority, should therefore be considered as detrimental to the personal data protection system, and therefore of great importance and reprehensible nature . The importance of the infringement is additionally increased by the fact that the infringement by the Entrepreneur was not an incidental event; the Entrepreneur's activity was continuous and long-lasting. It lasts from the expiry of the deadline for submitting explanations in the first letter of the President of the Personal Data Protection Office of [...] June 2019, until now.

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 Entrepreneur 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 repeated failure to receive correspondence addressed to the Entrepreneur and the lack of response to the only call received by the Entrepreneur from the President of the Personal Data Protection Office. At this point, it should be emphasized that the Entrepreneur had knowledge that by not picking up the correspondence and not responding to one of the personally received letters violates the provision of Art. 83 sec. 2 lit. b) Regulation 2016/679.

It should also be noted that receiving correspondence addressed to the Entrepreneur related to the activity conducted by him

is an obligation that must be required from the entity conducting business activity, in particular when this activity involves the processing of personal data of children (requiring special protection, as mentioned in recital 38). Regulation 2016/679).

It should also be emphasized that the Entrepreneur at no stage of the proceedings with reference number [...], as well as in the present proceedings, has not attempted to justify such proceedings. Considering that the Entrepreneur is an entity professionally involved in legal and economic transactions, the activity of which is related to the processing of personal data (in connection with the type of business activity - day care for children - requiring the acquisition, storage and sharing of data of natural persons, in this case being employees, children attending kindergartens and nurseries and their legal guardians), it had to be considered that it was and is still a deliberate activity of the Entrepreneur that prevents the President of the Personal Data Protection Office from accessing information necessary for the performance of this authority's tasks, which is a violation of the provisions of Regulation 2016/679 .

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 this proceeding on the imposition of an administrative fine, the Entrepreneur has not cooperated with the supervisory body in any way. The entrepreneur did not provide any explanations for the case with reference number [...]. 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 (in 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 Entrepreneur in these proceedings meets these criteria. The penalty imposed on the Entrepreneur should discipline him to properly cooperate with the President of the Personal Data Protection Office, both in the further course of the proceedings with reference number [...] and in any other future proceedings with the Entrepreneur's participation 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 to the possibility of the Entrepreneur incurring it, without major detriment to his business. This penalty will also have a deterrent function; will be a clear signal both for the Entrepreneur 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 Entrepreneur is - in view of the Entrepreneur's current proceedings as a party to the proceedings [...] - necessary. A financial penalty is a measure at the disposal of the President of the Personal Data Protection Office, which should enable access to information necessary in the conducted proceedings.

Due to the fact that the Entrepreneur 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 enterprise and the specificity, scope and scale of the business.

Pursuant to the wording of 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 Regulation 2016/679, are calculated in PLN at the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table as of 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 to that date. In the present case, the exchange rate is PLN 4.2794 per EUR 1.

Considering the above, the President of the Personal Data Protection Office adjudicated as in the conclusion of this decision.

The decision is final. Pursuant to Art. 53 § 1 of the Act of August 30, 2002 - Law on proceedings before administrative courts

(Journal of Laws of 2019, item 2325, as amended), the party has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, in 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).

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.

2020-07-06