

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 05

January

2021

DECISION

DKE.561.16.2020

Based on Article. 104 § 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 sec. 2, art. 60, art. 101, art. 101a paragraph. 2, art. 103 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) in connection with Art. 31, art. 58 sec. 1 lit. a) 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, with the change announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2) (hereinafter referred to as "Regulation 2016/679"), after conducting the administrative procedure initiated ex officio regarding the imposition on Anwara Sp. z o.o. with headquarters in Warsaw at Al. Jerozolimskie 81, an administrative fine, the President of the Personal Data Protection Office, finding that Anwara Sp. z o.o. with headquarters in Warsaw at Al. Jerozolimskie 81, the provision of Art. 31 and art. 58 sec. 1 lit. a) of 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 all information needed by the President of the Office for Personal Data Protection to perform his tasks, i.e. to consider the complaint of Mr. MK about irregularities in the process processing of his personal data, imposes on Anwara Sp. z o.o. with headquarters in Warsaw at Al. Jerozolimskie 81, an administrative fine in the amount of PLN 21,397 (in words: twenty one thousand three hundred ninety seven zlotys).

JUSTIFICATION

The Office for Personal Data Protection received a complaint from Mr. M. K., residing in W., hereinafter referred to as "the Complainant", about irregularities in the processing of his personal data by Anwara Sp. z o.o. with headquarters in Warsaw at Al. Jerozolimskie 81 (previously: Al. Solidarności 117/207), hereinafter referred to as the "Company", running a school [...] in

W. The indicated violation consisted in the processing of the complainant's personal data in the scope of his name, surname, address and PESEL number without his knowledge and consent. 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 to consider the complaint (under the reference number [...]), asked the Company in a letter of [...] July 2020 to comment - in within 7 days from the delivery of the summons - to the content of the complaint and to answer the following detailed questions regarding the case:

if, and if so, on what basis, when and from what source the Company obtained the Complainant's personal data, in particular in the scope of name, surname, address and PESEL number;

if, and if so, on what basis (please indicate a specific legal provision), for what purpose, to what extent and in what set, the Company is currently processing the complainant's personal data;

whether the Complainant's personal data was made available to other entities (in particular, the Education Office of the City Hall [...] W.), and if so, when, on what legal basis, for what purpose and scope and for which entities the data were shared;

whether the complainant asked the company to fulfill the information obligation under Art. 13, 14 or 15 of Regulation 2016/679, and if so, when and what was the content of the information provided;

whether the Complainant asked the Company to delete his personal data, and if so, when and how the Company responded to the above.

The letter in question was addressed to the address of the registered office of the Company disclosed in the National Court Register, ie [...] - valid on the date of posting the correspondence. Despite the correct delivery of the letter to the Company on [...] July 2020, the Company did not provide any reply to it.

In connection with the above, in a letter of [...] August 2020, the President of the Personal Data Protection Office again called the Company to respond to the content of the complaint and to provide detailed explanations on the matter, setting a 7-day deadline for replying to it. The company was also advised that failure to send 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. Despite the correspondence being delivered to the Company on [...] August 2020, it did not in any way respond to the request formulated by the personal data protection authority.

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

Complainant's complaint, the President of the Personal Data Protection Office 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 58 sec. 1 lit. a) Regulation 2016/679 - administrative proceedings to impose an administrative fine on the Company (under the reference DKE.561.16.2020. [...]). The Company was informed about the initiation of the procedure by letter of [...] October 2020, properly delivered to the Company on [...] October 2020. This letter was also requested by 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.

The company did not respond in any way to the above-mentioned correspondence, did not provide explanations in the matter, nor did not provide data allowing the determination of its financial situation.

The company operates, inter alia, in in the field of running post-secondary schools, general secondary schools, primary schools and pre-school education institutions, activities supporting education and in the field of advertising, market and public opinion research.

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 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 exercise of such competences, 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 controller and the processor to provide any information necessary for the performance of its tasks (Article 58 (1) (a)). Violation of the provisions of the Regulation 2016/679, consisting in failure to provide the information referred to above, resulting in a breach of the powers of the supervisory authority specified in art. 58 sec. 1, is subject to - 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 . 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 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 Company - the personal data administrator of the Complainant, Mr. MK - as a party to the proceedings conducted by the President of the Personal Data Protection Office (UODO) with the reference number [...] , 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 the above-mentioned case. Such activity of the Company constitutes a violation of Art. 58 sec. 1 lit. a) Regulation 2016/679.

It should be noted that in the proceedings with reference number [...], the President of the Personal Data Protection Office twice called on the Company to provide explanations necessary to consider the case.

Each of the letters sent by the President of the Personal Data Protection Office, i.e. both the letter of [...] July 2020 and the letter of [...] August 2020 (properly delivered to the Company - respectively - [...] July 2020 and [...] August 2020) remained unanswered. The above state of affairs was not changed by the subsequent initiation of the present proceedings for the imposition of an administrative fine. The company, properly notified by the supervisory body of its intention to undertake the measures specified in Art. 58 sec. 2 lit. i) of the Regulation 2016/679 of actions, and also informed about her - as a party to these proceedings - the right to comment on the collected evidence and materials as well as requests submitted, she did not take any steps to explain her inaction or justify the lack of cooperation in the President of the Personal Data Protection Office. Persons authorized to represent the Company did not contact the Office for Personal Data Protection in order to signal any doubts that the Company could have regarding the scope of information requested by the President of the Personal Data Protection Office.

The above-described proceedings of the Company in the case No. [...], consisting in the lack of response to the calls of the President of the Personal Data Protection Office to provide explanations, indicates a lack of will to cooperate with the President of the Personal Data Protection Office in establishing the facts of the case and correctly resolving it, or at least blatantly disregarding its obligations regarding cooperation with the President of the Personal Data Protection Office as part of his tasks specified in Regulation 2016/679.

It should be pointed out here that failure to provide the information requested and requested by the President of the Personal Data Protection Office from the Company, and which is undoubtedly in its possession (and therefore information about the circumstances of the processing of the Complainant's personal data), prevents a thorough consideration of the case initiated by Mr. MK's complaint. , it also results in excessive and unjustified prolongation of the above-mentioned proceedings, which is contrary to the basic principles governing the administrative procedure - set out in Art. 12 sec. 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256), the principles of insight and speed of proceedings. 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 of Regulation 2016/679 - an administrative fine in connection with the Company's failure to provide any information necessary to the President of the Personal Data Protection Office for the performance of 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 this regard, attention is drawn in each case to a number of circumstances set out in points a) to k) of the abovementioned provision. When deciding to impose an administrative fine on the Company and determining its amount, the President of the Personal Data Protection Office took into account the following circumstances aggravating the assessment of the violation:

The nature, severity and duration of the breach (Article 83 (2) (a) of Regulation 2016/679), as the Company's behavior subject to an administrative fine, which may constitute a breach of Art. 31 and 58 sec. 1 lit. a) of Regulation 2016/679, violates the system aimed at protecting one of the fundamental rights of a natural person, which is the right to the protection of their personal data, or more broadly - to the protection of their 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 the failure to provide any information requested by the President of the Personal Data Protection Office, and resulting in the

impediment and unjustified extension of the proceedings conducted by him, should therefore be considered as detrimental to the entire personal data protection system, and therefore of great importance and reprehensible nature . The significance of the breach is additionally increased by the fact that the breach by the Company was not a one-off and incidental event. On the contrary, the activities of the Company were continuous and long-lasting, which is undoubtedly confirmed by the fact that the infringement found in these proceedings lasts from the expiry of the deadline for submitting explanations, set out in the first letter of the President of the Personal Data Protection Office, i.e. from [...] July 2020, to now.

Intentional nature of the breach (Article 83 (2) (b) of Regulation 2016/679), manifested in the lack of will to cooperate with the supervisory body in order to provide all information necessary to resolve the case, in the course of which the authority requested the Company to provide it . This is evidenced in particular by the lack of responses to the requests of the President of the Personal Data Protection Office to provide explanations addressed to the Company, correctly delivered to it. It should be pointed out that the Company, being an entity professionally involved in legal and economic transactions, should be aware of its obligations, including obligations in the field of personal data protection law (and this should undoubtedly be considered the obligation of data controllers or processors to cooperate with President of the Personal Data Protection Office). The collection and processing of personal data is closely related to the subject of the Company's activities, which is, inter alia, running post-secondary schools, general secondary schools, primary schools and pre-school education institutions. Hence, in the opinion of the President of the Personal Data Protection Office, the Company should be required to have a level of awareness of its obligations adequate to the amount and category of personal data processed by it. It should also be noted that in the content of the letter of [...] August 2020, the President of the Personal Data Protection Office included an instruction that failure to send explanations by the Company may result in imposing an administrative fine on it, in accordance with Art. 83 sec. 5 lit. e) Regulation 2016/679. Thus, the Company was fully aware of the possible negative consequences of failure to provide explanations. Finally, it should be emphasized that at no stage of the proceedings with reference number [...], as well as in the course of these proceedings, did not attempt to justify its behavior, which requires interpreting it as deliberate action, preventing the President of the Personal Data Protection Office from obtaining information necessary to perform his tasks, constituting violation of the provisions of Regulation 2016/679.

Lack of cooperation with the supervisory body in order to remove the breach and mitigate its possible negative effects (Article 83 (2) (f) of Regulation 2016/679), as the Company did not provide any explanations in the course of these proceedings

regarding the imposition of an administrative fine, which would allow for the determination of the reasons for its inactivity or for further proceedings in 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 (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, an administrative fine imposed by a 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 proceedings with reference number [...] and in any 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 to the Company, 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 breach of great importance and as such is subject to will be financial sanctions. It should be noted here that the imposition of an administrative fine on the Company is - in view of the proceedings of the Company 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 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.

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) 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 PLN 21,397 (which is the equivalent of EUR 5,000), according to the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table for January 28, 2020.

Considering the above, the President of UODO ruled 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, 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 2020, item 1325), from the day following the date of submitting the application.

2021-02-05