

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 04

of December

2020

## DECISION

DKE.561.14.2020

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256), 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), art. 31, art. 58 section 1 lit. a) and e) and art. 58 sec. 2 lit. b) 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 data protection regulations ) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings regarding the imposition of an administrative fine on PG Sp. z o. o., President of the Personal Data Protection Office

gives a reminder P. G. Sp. z o. o. for breach of the provisions of Art. 31 and art. 58 sec. 1 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), consisting in failure to provide information in the proceedings [...] necessary for the President of the Office for Personal Data Protection to perform his tasks.

### Justification

In the proceedings with reference number [...], initiated on the basis of a complaint by M. Ś. (hereinafter also referred to as the "Complainant") for irregularities in the processing of his personal data, P. G. Sp. z o. o. (hereinafter also referred to as the "Company"), by letter of [...] June 2019, delivered to the Office for Personal Data Protection [...] July 2019, provided explanations on the matter. Due to the need to supplement these explanations, in a letter of [...] November 2019, delivered on [...] December 2019, the President of UODO called on the Company to send copies of contracts concluded with the Complainant, valid after [...] July 2018 - by 7 days from the date of receipt of the letter.

In the absence of a reply to this letter, the President of the Personal Data Protection Office (UODO), in a letter of [...] July

2020, again called the Company to send a copy of the above-mentioned agreements. The letter was delivered on [...] August 2020. The letter contained an instruction that failure to respond to the summons may result in the imposition of an administrative fine in accordance with Art. 83 sec. 5 lit. e) Regulation 2016/679 (GDPR). The company did not respond to this request as well.

In connection with the above, the present administrative proceedings were initiated under the reference number DKE.561.14.2020 [...] - concerning the imposition of an administrative fine on the Company for violation of Art. 31 and art. 58 sec. 1 lit. a) and e) of Regulation 2016/679 in connection with the failure to provide the information necessary for the President of the Personal Data Protection Office to perform his tasks. Information on the initiation of the administrative procedure in question and the collection of evidence in the case was delivered to the Company on [...] October 2020. The letter indicated that if the Company provided exhaustive explanations in the proceedings with reference number [...], to be granted by the President of the Personal Data Protection Office and justify the earlier failure to respond to these requests, this circumstance may have a mitigating effect on the administrative pecuniary penalty imposed in this proceeding, ref. no. DKE.561.14.2020 [...] or may result in withdrawal from its imposition.

On [...] October 2020, the Office for Personal Data Protection received a letter signed by the company's proxy, which contained further explanations regarding reference number [...] and an explanation of the reason for the lack of an earlier response to the request of the President of the Personal Data Protection Office. The reason was the addressing of the President of the Personal Data Protection Office (UODO) letters to commercial companies (PG Sp. z oo; PG Sp. z oo sp.k. and to P. Sp. z oo sp.k.), for which the Complainant did not perform any activities and that it were civil partnerships that appeared in the contracts with the Complainant as Principals. In addition, the letter indicated that the letters of the President of the Personal Data Protection Office (UODO) were sent to new employees who were not familiar with the Complainant's case, who were unable to locate and find the contracts with the Complainant required by the President of the Personal Data Protection Office. It was also indicated that "if the letters were addressed to each of the aforementioned commercial companies, with the indication that they relate to the activities of a given company within a specific civil partnership, then the contracts would certainly have been sent to you long ago". The letter raised the argument that the need to work remotely also had an impact on the delay in providing the answer. Copies of three civil law contracts to which the complainant was a party were attached to the letter. Moreover, the letter contained a request to waive the penalty. Additionally, an e-mail address was provided, which would be used to improve

contact with the Company.

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 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)).

Moreover, 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 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 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.

The President of the Personal Data Protection Office, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679, it may also consider it justified to issue a reminder to the Company in the scope of the infringement of the provisions of Art. 31 and art. 58 sec. 1 lit. e) Regulation 2016/679.

Pursuant to recital 148 of Regulation 2016/679, for more effective enforcement of the provisions of the Regulation, sanctions, including administrative fines, should be imposed for breaches of the Regulation, in addition to or instead of appropriate 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 previous relevant breach, how the supervisory authority became aware of on 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 the Regulation 2016/679 to the facts established in this case, it should be stated that the Company as the administrator of personal data and at the same time a party to the proceedings with reference number [...], by failing to respond to the request of the President of the Personal Data Protection Office of [...] July 2020 to provide explanations, it breached the obligation to provide the President of the Personal Data Protection Office with access to information necessary for the performance of his tasks, resulting from Art. 31 and 58 sec. 1. lit. e) Regulation 2016/679. In this case, the information essential for the further course of the proceedings was the confirmation of the legitimacy of the complaint - including establishing the legal and factual relations between the Company and the Complainant. Undoubtedly, one of the important evidence for making these findings are the civil law contracts, the submission of which was requested by the Company.

There is no doubt that the organization of the circulation of correspondence is essentially within the competence of an economic entity and the consequences of negligence in this respect are borne by this entity. Thus, the request of the President of the Personal Data Protection Office to provide explanations, addressed to P. G. Sp. z o. o. should have waited for the answer. In view of the above, it should be considered that the Company's explanations as to the reasons for not responding to the requests of the President of the Personal Data Protection Office do not constitute grounds for waiving the Company's liability in this respect.

However, at the same time, in the opinion of the President of the Personal Data Protection Office, these explanations remain credible. This is indicated by the history of case no. [...] The company has already submitted explanations in that case in a letter of [...] June 2019, delivered to the Office for Personal Data Protection [...] July 2019. Subsequent unanswered calls from the President of the Personal Data Protection Office (UODO) were finally answered in the explanations and attachments

submitted by the Company in this case. Thus, they enabled the President of the Personal Data Protection Office to use the information received and to continue the proceedings in the case no. [...] Moreover, the Company expressed readiness to further cooperation in order to clarify the matter. This allows us to assume not so much the lack of will or willingness to cooperate with the President of the Personal Data Protection Office, but the ineffectively organized flow of correspondence or the division of duties in this regard signaled by the Company.

In the opinion of the President of the Personal Data Protection Office, all the circumstances of the case, considered jointly, allow the conclusion that the lack of response to the requests of the President of the Personal Data Protection Office in the proceedings with reference number [...] was not deliberate.

In connection with the above, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, according to which each supervisory authority has the right to issue a reminder to the controller or processor in the event of violation of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office recognizes that it is justified to grant P. G. Sp. z o. o. admonition in the scope of the found violation of the provisions of Art. 31 and art. 58 sec. 1 lit. e) Regulation 2016/679.

The admissibility of replacing a financial penalty with a warning is also justified by recital 148 of Regulation 2016/679, which states that sanctions, including administrative fines, should be imposed "in order to make the enforcement of the provisions of this Regulation more effective". The President of the Personal Data Protection Office decided that in the case in question, in the light of the criteria set out in Art. 83 sec. 2 of Regulation 2016/679, it will be sufficient to issue a reminder.

However, it should 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 Company 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 the 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 Office for Personal Data Protection (address: ul. Stawki 2, 00-193 Warsaw). The complaint should be filed with a permanent fee in the amount of PLN 200, 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, as amended). A party (natural person, legal person, other organizational unit without legal personality) 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 aid may be granted upon the application of a party submitted before the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

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