OFFICE FOR PERSONAL DATA PROTECTION

Lt. Col. Sochora 27, 170 00 Prague 7

tel .: 234 665 111, fax: 234 665 444

posta@uoou.cz, www.uoou.cz

* UOOUX00CXHVW *

Ref. UOOU-00078 / 17-47

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29 and § 32 of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts and according to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., The Administrative Procedure Code decided on 6 December 2018 according to

provisions of § 152 par. 6 let. b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Dismissal of the party to the proceedings, the company

against the decision of the Office for Personal Data Protection ref. UOOU-

based

00078 / 17-41 of 18 September 2018 is rejected and the contested decision is upheld.

Justification

Proceedings for suspicion of committing an administrative offense pursuant to Act No. 101/2000 Coll., On protection personal data and on the amendment of certain laws in connection with the processing of personal data

against the party to the proceedings, the company

company clients

(hereinafter

"Party to the proceedings") was initiated by a notification to the Office for Personal Data Protection (hereinafter “Office”), which was delivered to the party on 9 January 2017. Basis for initiation

proceedings was the file gathered during the inspection initiated at the party to the proceedings

on 14 November 2016 by the Office Inspector Mgr. and Mgr. Božena Čajková. Subsequently, he was

use

and file material provided

, based

, which examined the facts in the same case

necessary to decide on the initiation of criminal proceedings.

On the basis of the evidence presented, the Office came to the conclusion that the party had committed the proceedings

administrative offense according to § 45 par. 1 let. e) of Act No. 101/2000 Coll., as amended

until 30 June 2017, as in the period from March 2016 to 4 May 2016 he processed personal

company customer data

physical

persons in the range of name, surname, residential address, gender, age and telephone number, as well as personal

, namely personal data

natural persons doing business in the range of name, surname, telephone number, number

data approx

sim of cards used by the person, method of making payments for the operator's services and name of the bank,

from which the payment comes, without fulfilling the obligation set out in § 5 paragraph 2 of the Act

No. 101/2000 Coll., ie the obligation to process personal data with the consent of the data subject or

in the cases specified in § 5 par. 2 let. a) to g) of Act No. 101/2000 Coll.

For committing this administrative offense, the decision of the Office ref. UOOU-00078 / 17-41 of

On 18 September 2018 (hereinafter the “Decision”), a fine of CZK 400,000 was imposed on the party to the proceedings.

The party to the proceedings objected to the decision in time. It states that

The decision suffers from a number of defects, in particular based on an incorrect legal assessment of the case, was not

all relevant facts are taken into account and is unreviewable, in particular with regard to

on the amount of the fine imposed. For these reasons, he proposes to change the decision and the fine imposed

reduce.

In this regard, he primarily objected to the actions of the employee

cannot be attributed

to the party to the proceedings, with regard to the wording of Section 167 of Act No. 89/2012 Coll., the Civil Code,

according to which “a legal person is bound by an offense which it commits in the performance of its tasks

committed by a member of the elected body, an employee or another representative thereof vis-à-vis a third party ', as that

made by the administrative authority of the first instance. In this case, according to the party,

the task of the employee to purchase illegally obtained databases containing personal data, which

confirmed by the employee in the minutes of the interrogation of the accused of 19 December 2017. Hearings

therefore, the employee was described by the party as excess. The party also disputed the allegations

employee, according to which he directed his actions to his advantage, because it from his point of view

it is not decisive if he did not benefit from this conduct. In this context, then further

argued that the provisions of the employee's conduct and imputability could not be applied

private law (ie the Civil Code) to address employee liability,

legal persons vis-à-vis third parties, but not liability for the commission

offense.

The party also commented on the possibility of invoking liberation grounds, referring to

internal regulations governing the handling of personal data with which all employees were

acquainted and were obliged to comply with them. Considers the adoption of these rules to be an effort

by which the party sought to prevent a breach of a legal obligation. He did not take this fact

the administrative authority of first instance. In addition, the party cooperated with both the authorities

involved in criminal proceedings, with the administrative authority of the first instance immediately after

investigation and administrative proceedings are initiated. It also made it possible to check all data repositories,

whereas the purchased databases were not found here. To the found databases, the participant in the proceedings

he stated that he had never come into contact with these and that personal processing could not have taken place

data on his part. The databases were found and secured only on information carriers

employee and only he stored and retained personal data.

The party also reiterated that it did not have the opportunity to familiarize itself with the contents of the database

natural persons doing business created from a database obtained from the police, and that was thus shortened to

their rights, as the amount of this information was considered by the

aggravating circumstance in determining the sanction. It also questions the origin of the database

"Contacts

natural persons as it was obtained

", Which contained personal data

not from the participant's employee

police authority only from the company

management. Therefore, it cannot be assumed that this database was available to her at all. To

The party also points out that it has been involved in marketing research for 15 years. Annually

will contact you by phone and ask for consent to a possible future contact approx

persons (as

both natural and natural persons). In view of this fact, he considers it to be

more than possible, it has the consents of persons who were part of the stolen databases.

After finding out the excessive behavior on the part of the employee, there was

to take a number of other organizational and technical measures to:

no similar excess occurred in the future. Moreover, as has already been the case

mentioned above, it did not benefit from the purchase of the databases, as it never used them in any way

did not process. On the contrary, the excessive conduct had an unfavorable economic effect on the party to the proceedings

impact and weakened the reputation. The administrative body of the first instance also, in the opinion

the party to the proceedings, did not sufficiently deal with the contradictory contents of the statements of the accused and

witnesses

in criminal proceedings, and these documents cannot be used as evidence in court proceedings.

The appellate body reviewed the decision in its entirety, including the previous process

its issue and first dealt with the arguments of the party to the proceedings.

In that regard, the Appellate Body states, in particular, that

was in the decisive period

deputy director and member of the supervisory board of the party to the proceedings and was also responsible for operations

divisions providing data collection for research projects. They were then obviously available for purchase

spent funds of the party to the proceedings. From these facts it must be deduced that

Acquisition of contacts for more precise targeting of research to individual regions was the task of the work

Mr.

, moreover, this fully corresponded to the subject of activity of the party to the proceedings, which is e.g.

marketing research and data analysis. Mr

therefore, it cannot be understood as an obvious excess

from the normal activities of the manager, although he himself stated that it was not his job

buy any database. Nor can it be logically assumed that it would be official

The declared job of any employee was to purchase "illegally obtained"

databases, as stated in the decomposition. Coherence of the purchase of databases with the subject of activity

party to the proceedings is therefore evident, showing where the databases were illegally purchased

found is not decisive.

At the same time, it should be noted that the Police provided the databases of personal data directly

at the employee of the party to the proceedings. Furthermore, a police investigation has shown that it has taken place

to make the personal data in question available via a web repository

.

The party to the proceedings therefore undoubtedly had personal data at its disposal for some time. That of the subject

The conduct had no further benefit is merely a consequence of the conduct of the criminal authorities

management. However, it is clear from the circumstances of the case that the data should have been used in its activities, ie

should be a tool for optimizing these activities. On the other hand, the party is not in any way

did not deal with that, resp. In general, it is not at all clear how the data could be used within

private activities of the employee concerned, although as a result he seeks primarily to do so

attribute responsibility to him for the conduct in question.

The question of the use of a private law to infer liability of a legal person for

conduct of its employee (Section 167 of Act No. 89/2012 Coll.) the Appellate Body states that with respect to

the absence of a specific provision governing this institute at the relevant time by law

No. 101/2000 Coll. or the Administrative Procedure Code, this interpretation may be used as a subsidiary. Adjustment

contained in the Civil Code is a certain basis on which it was based

codified legal regulation defining a legal entity as the perpetrator of a misdemeanor in § 20

Act No. 250/2016 Coll., on liability for misdemeanors and proceedings on them. In case of application

however, the latter provision would undoubtedly have to be re-imported

liability of the party to the proceedings. In this context, the Appellate Body considers it necessary

to recall also the judgment of the Supreme Administrative Court ref. 2 As 88/2006 of 22 August 2007

according to which “public and private law in modern society are not two worlds separate

"Chinese wall", in which completely and fundamentally different rules would apply, but two spheres of one

in its essence a unified and comprehensive legal order… Theory of public law as a special one

rights to obec general ’private law is then valuable in practice umožňuje by allowing subsid in the alternative’

apply the rules of private law in public law, where public law is missing or there is

kusá “."

Regulations adopted by the party to ensure the security of the processed personal data

cannot be assessed with regard to the act committed, as they affect already processed personal ones

data, not on how to obtain it. This fact cannot be taken into account either

as a ground for liberation or as a circumstance reducing the gravity of the conduct. At the same time, however, it is necessary

recall that it is not inconceivable for a party to draw further consequences from specific ones

persons who are in violation of Act No. 101/2000 Coll. indicated by this procedure.

As regards the impossibility of providing the databases which form part of the file within the

access to the file, the Appellate Body refers to the Police statement of 24 July 2018,
according to which this would frustrate the purpose of the criminal proceedings. In addition, this would be in your
as a result, it also meant a certain repetition of the administrative offense in question. However, even this way
the party to the proceedings could not be deprived of his rights, in the sense indicated in the appeal,
since the refusal to provide the database, resp. mere enabling preview, definitely could not have
resulting in an unreviewable scope and amount of personal data concerned.
It is further recalled that the data in question were primarily obtained for completely different purposes than
as intended by the party to the proceedings. In addition, the issue of the existence of possible consent
processing of personal data, resp. other relevant legal title was related to
by obtaining the databases in question a priori. The party 's argument that between
the data subjects may also be persons who have previously given their consent to the processing
Personal data is thus irrelevant and clearly purposeful, notwithstanding that
to the provisions of Section 5, Paragraph 4 of Act No. 101/2000 Coll. would be obliged to have such consent
to prove in specific cases, which he clearly did not receive.
The allegations concerning the inapplicability of the documents provided by the Police also appear to be purposeful,
resp. regarding their contradiction. Here it is necessary to recall § 51 paragraph 1 of the Act
No. 500/2004 Coll., according to which “all means of proof may be used to take evidence, which
are suitable for ascertaining the state of affairs ”, provided that pursuant to Section 50, Paragraph 4 of Act No. 500/2004 Coll.
"The administrative authority shall assess the evidence, in particular the evidence at its discretion", in which case
he concluded that a comprehensive chain of clues had been put together, which was well documented
committing the administrative offense in question.

The appellant therefore rejected the party's arguments and, after an overall examination
found no reason to make the decision illegal. He considers it appropriate
as well as the fine that was imposed at the lower limit of the possible rate. The same applies to the appellate body
found no errors in the procedure of the administrative body of the first instance. Based on all

therefore ruled as set out in the operative part of this Decision.

Lessons learned:

Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged

No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, December 6, 2018

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman