

Warsaw, day 13

May

2022

Decision

DKE.561.13.2022

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended) in connection with Art. 7 sec. 1 and 2 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. 58 sec. 2 lit. b) in connection with art. 31 and art. 58 sec. 1 lit. a) and ... e) 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 Regulation) (Official Journal of the EU L 119 of 04.05.2016, p. 1, Official Journal of the EU L 127 of 23.05.2018, p. 2 and Official Journal of the EU L 74 of 4.03.2021, p. 35) , after conducting administrative proceedings regarding the imposition of an administrative fine on the Voivode [...], the President of the Office for Personal Data Protection, reprimands the Voivod [...] for violating the provisions of Art. 31 and Art. 58 sec. 1 lit. a) and ... e) Regulation of the European Parliament and of the EU Council 2016/679 and EU Council 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (Official Journal EU L 119 of 04/05/2016, p. 1, Official Journal of the EU L 127 of 23/05/2018, p. 2, and in Official Journal of the EU L 74 of 04/03/2021, p. 35) hereinafter referred to as "Regulation 2016/679", consisting in the lack of cooperation with the President of the UODO in the performance of his tasks and failure to provide the President of the UODO with access to personal data and information necessary to perform his tasks.

Justification

Facts

The Office for Personal Data Protection received three complaints about the processing of personal data by the Voivode [...]: Mrs. E. M. and Mr. D. M., hereinafter referred to as the Complainants, for the processing of their personal data and personal data of their underage children F. M. and A. M. - proceedings ref. no. [...] (previously: [...]); Mrs. K. B. and Mr. G. F., hereinafter referred to as the Complainants, for the processing of their personal data and personal

data of their underage daughter M. F. - proceedings ref. no. [...] (previously: [...]);

Mr. A. B., hereinafter referred to as the Complainant, for the processing of his personal data and personal data of his minor son Ad. B. - proceedings with reference number [...] (previously: [...]).

President of the Office for Personal Data Protection (hereinafter "President of the Personal Data Protection Office") as part of initiated administrative proceedings conducted to consider complaints filed under reference numbers: [...] (previously: [...]); [...] (previously: [...]); [...] (previously: [...]) called on the Voivode - to take a position on the content of the above-mentioned complaints, and to submit explanations in the case by answering questions formulated in detail, in particular regarding the legality of the processing of personal data by the Voivode of the above-mentioned complainants. Due to the fact that in 2018 explanations to the above matters were submitted by Ms A. G., Head of the Branch [...] of the Voivodship Office, without enclosing the power of attorney to submit such explanations and to act in the proceedings before the President of the UODO on behalf of the Voivode, the letters addressed to the Voivode also contained a request to supplement formal deficiencies by attaching an appropriate power of attorney (Article 33 § 3 k.p.a.).

In the case of administrative proceedings with reference number [...] (previously: [...]), the Voivode [...] was summoned by the President of the UODO in three letters from: [...] March 2020, [...] June 2020 and [...] December 2020. Letters these in the manner provided for by the provisions of the k.p.a. about deliveries, were also delivered to the Voivode. In the letter of [...] June 2020, the voivode was instructed that the lack of explanations regarding the above summons will result in the imposition of an administrative fine in accordance with Art. 83 sec. 5 lit. e) GDPR in the amount specified in art. 101 of the Personal Data Protection Act of 2018.

In the case of administrative proceedings with reference number [...], the Voivode [...] was summoned by the President of the UODO in three letters from: [...] February 2020, [...] June 2020 and [...] December 2020. All the above-mentioned the letters were also delivered to the Voivode in the manner provided for in the k.p.a. about deliveries. In the letter of [...] June 2020, the voivode was instructed that the lack of explanations regarding the above summons will result in the imposition of an administrative fine in accordance with Art. 83 sec. 5 lit. e) GDPR in the amount specified in art. 101 of the Personal Data Protection Act of 2018.

In the case of administrative proceedings with reference number [...], the Voivode was summoned by the President of the UODO with four letters from: [...] November 2019, [...] February 2020, [...] June 2020 and [...] December 2020. These letters

were delivered to the Voivode in the manner provided for by the provisions of the k.p.a. about deliveries. In the letter of [...] December 2020, the Voivode [...] was instructed that the lack of explanations regarding the above summons will result in the imposition of an administrative fine in accordance with Art. 83 sec. 5 lit. e) GDPR in the amount specified in art. 101 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), hereinafter referred to as the "Act on the Protection of Personal Data of 2018".

Due to the Governor's failure to provide information necessary to resolve cases with reference numbers: ([...] (previously: [...]); [...] (previously: [...]); [...] (previously: [...]), the President of UODO in a letter of [...] April 2022, initiated ex officio against the Voivode - pursuant to Article 83(5)(e) of Regulation 2016/679 - administrative proceedings regarding the imposition of an administrative fine on the Voivode (under reference number DKE.561.13 .2022).

The letter contained an instruction on the possibility of imposing on the Voivode - in the absence of an exhaustive response to this request - an administrative fine pursuant to Art. 83 sec. 5 lit. e) of Regulation 2016/679 due to the lack of cooperation with the President of the UODO in the performance of his tasks (Article 31 of Regulation 2016/679) and failure to provide access to personal data and information necessary for the President of the UODO to perform his tasks (Article 58 para. 1 point a) and e) of Regulation 2016/679).

In the above in the letter, the Voivode was also instructed that if he provided exhaustive explanations to the proceedings with reference numbers: [...] (previously: [...]); [...] (previously: [...]); [...] (previously: [...]) to provide, which he was called upon by the President of the UODO and will justify the earlier lack of response to these requests, this circumstance in the proceedings under ref. no. DKE.561.13.2022 may have a mitigating effect on the amount of the administrative fine or may result in waiving its imposition.

The above factual circumstances were determined by the President of the UODO on the basis of all official correspondence between the Voivode and the President of the UODO, contained in the files of the proceedings with the following reference numbers: (under reference number [...] (previously: [...]); [...] (previously: [...]); [...] (previously: [...]) This correspondence reflects all attempts by the President of the UODO to obtain access to information necessary to perform his tasks, i.e. in this case - to consider cases with the above reference numbers, and on the other hand parties - the reaction of the Governor to the requests of the President of the UODO.

In response to the letter informing about the initiation of proceedings regarding the imposition of an administrative fine on the

Voivode, the Voivode immediately submitted explanations that allowed the President of the UODO to continue proceedings in cases with reference numbers: [...] (previously: [...]); [...] (previously: [...]); [...] (previously: [...]). Namely, in the letters of the Voivode of [...] May 2022 about reference numbers: [...] regarding the proceedings with reference number [...] (previously: [...]); [...] regarding the proceedings with reference number [...] (previously: [...]); [...] regarding the proceedings with reference number [...] (previously: [...]), there were extensive explanations, in particular regarding the legality of the processing of personal data by the Voivode of the above-mentioned complainants. These letters were addressed to the President of the UODO in a separate for each of the above-mentioned correspondence matters.

The voivode also justified the reasons for his silence in the proceedings with reference numbers: [...] (previously: [...]); [...] (previously: [...]); [...] (previously: [...]), which the President of the UODO believed. The voivode indicated that his silence in the abovementioned proceedings was due to the fact that cases concerning preventive vaccinations are conducted in the [...] Voivodship Office in [...] (hereinafter referred to as the "Office") by the Department [...]. This department was the leading organizational unit in the implementation of the Voivode's tasks undertaken to prevent, counteract and combat COVID-19. The period of no responses within the above-mentioned proceedings coincided with the highest intensity of tasks related to the epidemic announced in the country. The month of February 2020 - the beginning of the pandemic and the need to coordinate epidemiological activities by the Voivode (with sanitary and epidemiological stations, testing points, places of stay for people in quarantine or isolation, designating further places for hospitalization of patients with COVID-19, securing the services of coroners <examination of the circumstances sudden, unexplained deaths>, etc.). In turn, December 2020 - organization of a temporary hospital for the sick in [...] and cooperation with the operator of the temporary hospital. Especially the first year of the epidemic was a very burdensome time for the Office's activities, and tasks related to COVID-19 became a priority, which pushed many substantive tasks to the background. Not without significance was also the increase in the percentage of sickness absenteeism of employees with each wave of the Sars-Cov-2 virus epidemic. The resulting violation was also influenced by the difficult organizational situation in the Department [...]: starting from November 2020, the then Director of the Department was on long-term sick leave, and in January 2021 he was dismissed from his position. A new director in the Department [...] was appointed after two months, i.e. in March 2021. Among the list of initiated and unfinished cases, the new director of the Department [...] was not presented with the problem raised in the correspondence of the President of the Personal Data Protection Office, hence until the date of receipt information on the initiation of administrative proceedings

regarding the imposition of an administrative fine on the Voivode, he was not aware of the failure to settle matters on time. Head of the Department [...], responsible for supervising matters related to vaccination, who received earlier correspondence from the President of the UODO in the above-mentioned cases, he did not ensure that the case was dealt with on time. Currently, this manager is in the notice period of the employment contract.

The Voivode also indicated that personnel changes in the above-mentioned period also concerned changes in the position of the Voivode. Mr. [...] was dismissed from the position of the Voivode [...] in December 2020, and Mr. [...] began to hold the office of the Voivode from [...] January 2021. According to the Voivode, the excess of duties during the difficult epidemic period, employee absenteeism and personnel changes led to the situation. In connection with the above, in a letter of [...] May 2022, the Voivode sent a reminder to the Director of the Governor's Office, Directors of Departments, Offices and Delegations, Heads of other organizational units of the Office about the need to immediately inform the Data Protection Inspector appointed in the Office, among others about proceedings conducted before the supervisory authority in the field of personal data protection, because earlier calls regarding the above proceedings, the Personal Data Protection Inspector had no knowledge. According to the Voivode, the action taken by him will certainly prevent similar situations in the future. The voivode, being aware of the lack of cooperation with the President of the UODO, asked to take into account the above-mentioned explanations and withdrawal from imposing an administrative fine on the Voivode. After reviewing all the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

Legal justification

In accordance with art. 57 sec. 1 lit. a) of Regulation 2016/679, the President of the UODO - 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 competence, the President of the UODO considers, among others: complaints by data subjects, conduct investigations into these complaints to the extent appropriate and inform the complainant of the progress and results of these investigations within a reasonable time (Article 57(1)(f)). In order to enable the implementation of such tasks, the President of the UODO is entitled to a number of tasks specified in art. 58 sec. 1 of Regulation 2016/679, rights in the field of conducted proceedings, including the right to order the controller and the processor to provide all information needed to perform its tasks (Article 58(1)(a)) and the right to obtain from the controller and the processor access to any personal data and any information

necessary to perform its tasks (Article 58(1)(e)). In addition, the President of the UODO is entitled to a number of specified in art. 58 sec. 2 corrective powers, including issuing 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 failure by the public authority being the administrator or processor to provide access to the data and information referred to above, resulting in the violation of the authority's rights set out in art. 58 sec. 1 of Regulation 2016/679 (including the right to obtain personal data and information necessary to perform its tasks and to gain access to premises, equipment and means for data processing), and may be subject - in accordance with art. 83 sec. 5 letter e) in fine of Regulation 2016/679 in connection with art. 102 sec. 1 and 3 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o." – an administrative fine of up to PLN 100,000. It should also be pointed out that the controller and the processing entity are obliged to cooperate with the supervisory authority in the performance of its tasks, as provided for in art. 31 of Regulation 2016/679. Failure to comply with this obligation is also at risk - in accordance with Art. 83 sec. 4 lit. a) Regulation 2016/679 in connection with Art. 102 sec. 1 and 3 u.o.d.o. – an administrative fine of up to PLN 100,000.

The President of the UODO, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679 may also consider it justified to issue a reminder to the administrator in the scope of the identified violation of the provision of art. 31 in connection with art. 58 sec. 1 lit. e) Regulation 2016/679. Pursuant to recital 148 of Regulation 2016/679, in order to make enforcement of the Regulation more effective, sanctions, including administrative fines, should be imposed for violations 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 a warning. However, due consideration should be given to the nature, gravity and duration of the infringement, whether the infringement was intentional, the actions taken to minimize the damage, the degree of responsibility or any significant previous infringements, the manner in which the supervisory authority became aware of the infringement, compliance with the measures imposed on the controller or processor, the application of codes of conduct and any other aggravating or mitigating factors.

Referring the above-mentioned provisions of Regulation 2016/679 to the factual state established in this case and described at the beginning of the justification of this decision, it should be stated that the Voivode - the administrator of the Complainants' personal data - as a party to the proceedings conducted by the President of the UODO with reference numbers: [...]

(previously: [...]); [...] (previously: [...]); [...] (previously: [...]), undoubtedly violated the obligation to provide the President of the UODO with access to information necessary to perform his tasks - in this case, to resolve the case on the merits. However, in response to the information about the initiation of administrative proceedings in the case with reference number DKE.561.13.2022 [...] The voivode submitted extensive explanations allowing the President of the UODO to conduct further proceedings in cases with reference numbers: [...] (previously: [...]); [...] (previously: [...]); [...] (previously: [...]). According to the President of the UODO, the actions of the Voivode certainly resulted in the lack of access to evidence indicating the legality and compliance with the law of the processing of the Complainants' personal data by the Voivode, for the period from 2019 to the date of initiation of the proceedings to impose an administrative fine on the Voivode. The justification provided by the Voivode for the lack of response to the requests of the President of the UODO does not relieve him of responsibility for the omission found. However, the reasons for the lack of cooperation with the supervisory authority indicated by the Voivode should have been taken into account as credible and having a significant impact on the assessment of the Voivode's behavior in the context of the choice of sanctions applied to him in these proceedings.

In the opinion of the President of the UODO, the above-mentioned the infringement was unintentional. All the circumstances of the case, considered together, allow us to conclude that the Voivode's lack of response to calls for explanations was not intentional, but resulted primarily from the multiplicity of tasks during the difficult epidemic period, absenteeism of employees and personnel changes. In addition, the actions taken by the Voivode to avoid similar events in the future prove that the Voivode is willing to cooperate with the President of the UODO.

The voivode immediately attempted to contact the Office in order to provide explanations necessary for the further conduct of the proceedings under reference numbers: [...] (previously: [...]); [...] (previously: [...]); [...] (previously: [...]) and explained why he remained silent in these proceedings.

In the opinion of the supervisory authority, the subsequent, active attitude of the Voivode indicates readiness to further cooperate with him. At this point, it should also be pointed out that the mere initiation of proceedings regarding the imposition of an administrative fine and the real prospect of imposing an administrative fine have become a clear signal for the Voivode that further evasion of the obligations imposed by the provisions of Regulation 2016/679 will inevitably lead to to apply the strictest sanctions provided for in these regulations.

The President of the UODO decided that in this case, issuing a reminder, in the light of the criteria set out 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 Article 83(1) of Regulation 2016/679).

It should also be noted that in the event of a similar event in the future, each reminder issued by the President of the UODO to the Voivode will be taken into account when assessing the grounds for a possible imposition of an 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 UODO resolved as in the operative part of this decision.

Instruction

The decision is final. The party has the right to lodge a complaint against the decision to the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the UODO (address: ul. Stawki 2, 00 - 193 Warsaw).

The entry fee for a 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 a lawyer, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of the Party submitted before the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

Print article

Metadata

Provider:

Penalty and Execution Department

Produced information:

Wojciech Trebnio

2022-05-13

Entered the information:

Edith Magziar

2023-06-05 11:06:30

Recently modified:

Edith Magziar

2023-06-05 11:22:24