

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

September

2020

DECISION

DKE.561.5.2020

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 7 sec. 1 and 2 and article. 60 of the Act of May 10, 2018 on the Protection of Personal Data (i.e. Journal of Laws of 2019, item 1781), following administrative proceedings concerning the imposition of an administrative fine on the Commander of the City Guard in L. for violation of Art. 31 and art. 58 sec. 1 lit. a) and e) of Regulation (EU) 2016/679 of the European Parliament and of the Council 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 (Official Journal of the European Union, L 119, May 4, 2016) hereinafter also referred to as the GDPR, consisting in the lack of cooperation with the President of the Personal Data Protection Office in the performance of his tasks and failure to provide information necessary to perform his tasks, President of the Office for Personal Data Protection discontinues the proceedings.

JUSTIFICATION

On [...] April 2020, the Office for Personal Data Protection received information from the inhabitants of L. 19 "). The case was registered under the reference number [...].

In a letter of [...] April 2020, the President of the Office for Personal Data Protection (hereinafter also referred to as the President of the Personal Data Protection Office) called on the Commander of the City Guard in L. (hereinafter also referred to as the Party) to provide explanations regarding the control carried out by the City Guard in L. - in the context of protection of personal data of residents. The summons was delivered to the addressee by e-mail to the address of the inbox [...], which was confirmed by an official submission certificate (UPP).

Due to the urgent nature of the case, resulting from the potential negative consequences of disclosing the data of persons in quarantine, the Party was given a deadline of 4 days to submit explanations on the matter. The party did not respond to the

call.

On [...] May 2020, the President of the Personal Data Protection Office (UODO) sent a letter to the Party again summoning it to immediately provide explanations in the matter. The summons was delivered to the addressee again by e-mail to the address of the inbox [...], and confirmed by an official submission certificate (UPP). The party did not respond to the summons.

In connection with the above, on [...] May 2020, the President of UODO initiated these administrative proceedings regarding the imposition of an administrative fine on the Commander of the City Guard in L. for violation of Art. 31 and art. 58 sec. 1 lit. a) and e) of Regulation 2016/679 (GDPR) due to the lack of cooperation with the President of the Personal Data Protection Office as part of the performance of his tasks and failure to provide the information necessary for the President of the Personal Data Protection Office to perform his tasks in connection with the proceedings with reference number [...].

In addition to correctly delivering to the Party the information on the initiation of the proceedings and gathering the evidence in this case, an attempt was made to contact the Party by phone. In the course of the conversation, it was found that the Party has not recently checked the contents of the electronic inbox for organizational reasons and is not aware of the proceedings conducted by the Personal Data Protection Office with its participation.

As a result of telephone contact, the Party immediately submitted written explanations in the case with reference number [...].

Moreover, the party submitted separate explanations in the present case. These explanations indicated that the main reason for the lack of response to the requests made by the President of the Personal Data Protection Office was organizational reasons related to the temporary absence of an employee whose task was, inter alia, checking the contents of the electronic inbox of the Municipal Police in L. During the absence of the above-mentioned person, the obligation to check the electronic inbox was delegated to the Deputy Commander of the City Guard in L., however, due to the negligible number of letters coming in this form, the checks were not carried out daily. In addition, the Party indicated that from the moment of the declaration of the pandemic in the territory of the Republic of Poland and the implementation of the order of the Voivode D. of [...], prohibitions and obligations resulting from the generally applicable provisions of law, related to the prevention of the spread of the COVID-19 infectious disease, the number of electronic correspondence received significantly decreased, which influenced the successiveness of checking the electronic inbox. The party indicated that the delay in reading and referring to the letters did not result from the party's ill will, but from the overlapping of many coincidences - the absence from work of persons authorized to operate the mailbox and the occurrence of a non-standard, extraordinary situation in the country having

an indirect impact on the cyclical logging in to the e-PUAP platform to take correspondence. The party requested that a fine be waived and the proceedings in the case should be discontinued.

In these facts, the President of the Personal Data Protection Office considered the following.

Pursuant to Art. 16 sec. 1. The Act of February 17, 2005 on the computerization of the activities of entities performing public tasks (i.e. Journal of Laws of 2020, item 346, as amended), a public entity, organizing data processing in the ICT system, is obliged the possibility of transferring data also in electronic form by exchanging electronic documents related to the handling of matters falling within its scope of operation, using IT data carriers or electronic means of communication. Moreover, the content of sec. 2. of the above-mentioned Act, orders the public entity to provide an electronic inbox that meets the standards specified and published on ePUAP by the minister responsible for computerization, and provides its service.

The Commander of the City Guard in L. did not respond to properly delivered summons to provide explanations. It should be noted here that the epidemic in the territory of the Republic of Poland, and earlier the state of epidemic threat due to the spread of an infectious disease caused by the SARS-CoV-2 virus ("COVID-19"), resulted in administrative period did not start and the running of the started time limits was suspended, pursuant to the then binding Art. 15zzs paragraph. 1. The Act of March 2, 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws, item 374, as amended). However, the period for submitting explanations in the case of [...] was not suspended due to the exception indicated in Art. 15zzs paragraph. 4. of the Act, because taking into account the nature of the infringement, taking immediate action on the part of the administrator was justified on the grounds of the public interest. Failure to do so could cause serious damage to the rights and freedoms of data subjects. The instruction in this regard was included in the content of the summons.

However, the reason for the Party's lack of response was not a lack of will to cooperate with the President of the Personal Data Protection Office in the scope of his duties, but technical and organizational obstacles related to access to the e-PUAP electronic inbox. The party fully explained the reasons for the lack of receipt of correspondence and the lack of a prior response to the requests of the President of the Personal Data Protection Office. The President of the Personal Data Protection Office believed these explanations due to the fact that they remain consistent, are confirmed by the evidence collected in the case and that the Party submitted written explanations in the proceedings with reference number [...], in which the Party's previous passivity was the reason for the initiation of the present proceedings.

For the above reasons, the present administrative procedure became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Civil Procedure

Pursuant to the above-mentioned provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, in whole or in part, respectively. The doctrine states that "The discontinuation of the proceedings is not dependent on the will of the administrative body, and even less left to the discretion of the body - this body is obliged to discontinue the proceedings if it is found to be irrelevant. (...) The redundancy of the proceedings may also result from a change in the facts of the case. The proceedings must be deemed to be groundless as a result of the cessation of the facts subject to regulation by the administrative authority by way of a decision (cf. the justification of the judgment of the Supreme Administrative Court of 29 September 1987, IV SA 220/87, ONSA 1987, No. 2, item 67) "- Przybysz Piotr Marek. Art. 105. In: Code of Administrative Procedure. Comment updated. LEX Legal Information System, 2019.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

2021-02-09