

OPINION

OFFICE FOR THE PROTECTION OF PERSONAL DATA OF THE SLOVAK REPUBLIC

Delivery of documents in administrative proceedings

and viewing the administrative file

In the recent period, many municipalities and towns have turned to the Office with requests regarding the right of the procedure for the delivery of documents in administrative proceedings (especially documents by which the administrative proceedings begin and the decision on the merits) and when viewing the file material kept within the framework administrative procedure, with regard to the protection of personal data.

As far as the delivery of documents is concerned, the questions of municipalities and cities mainly concerned the issue of delivery

decisions with several participants in administrative proceedings and delivery of documents through public decree.

In relation to delivery, it is necessary to state that this is an institute that has an irreplaceable place in administrative proceedings, since without proper delivery of documents defined by legal regulations in the administrative procedure, it is not possible to start this procedure, to proceed in the already started administrative procedure

nor to terminate the administrative proceedings. Documents in administrative proceedings by the administrative authority to the participant

of the administrative procedure is sent in full, without modifications, as it depends on the content of these documents even the course of the administrative procedure itself and the participant in the administrative procedure has by law no. 71/1967 Coll.

on administrative proceedings (administrative procedure) as amended (hereinafter referred to as "administrative procedure") granted various rights and obligations that are linked to the facts found in the administrative proceedings and in most cases contained in these documents (e.g. the right to comment on the documents necessary for issuing a decision, proposing evidence, the right to file an appeal, lawsuit, etc.).

The intervention of the administrative authority in the documents notified to the participant of the administrative procedure (e.g.

through the anonymization of personal data of other participants in the administrative procedure

in the decision), the purpose of the individual rights of the participant in the administrative procedure could be frustrated

(e.g. a participant in administrative proceedings would not be able to dispute certain facts, etc.). Writings

(including the decision), which are the content of the administrative file in a specific administrative

proceedings and which are delivered to the participants of the administrative proceedings in question, to which the latter is

entitled

a party to the proceedings, according to the administrative procedure, always has the right to express himself, are delivered

without intervention

from the administrative body to these documents, i.e. from. in non-anonymized form.

Delivery by public order is another method in addition to delivery to your own hands

delivery of documents in administrative proceedings. The administrative order establishes specific conditions,

when service by public order will be used. According to § 26 of the Administrative Procedure, the following shall be used

form of delivery a) when the participants in the administrative procedure are not known, b) when the residence of the

participants

of the administrative procedure is not known or c) if so provided by a special regulation [e.g. the law

no. 50/1976 Coll. on spatial planning and building regulations (Building Act) as amended

regulations]. The provision in question also regulates other conditions that must be met in order for it to be

the document duly delivered in this way.

Hand delivery as well as delivery by public order are equivalent

forms of delivery of documents in administrative proceedings, therefore the above applies similarly, and therefore

documents delivered in administrative proceedings in the form of a public decree are delivered

in non-anonymized form.

Another similar issue is looking into the administrative file. Looking into the file is

one of the basic rights of a participant in administrative proceedings, which he can exercise at any time

in the course of administrative proceedings. Through this right, a participant in administrative proceedings

informs the documents for issuing a decision. As the decision in the matter has legal effects,

by which it interferes with the legal status of the participants in administrative proceedings, it is necessary that informed the participant of the administrative procedure of all the facts in full and that he should the opportunity to comment on all these facts (including any personal data).

Violation of the right to inspect the file could occur through mechanical intervention by the administration authority, which would a participant in administrative proceedings exercising this right according to the administrative order provided an anonymized administrative file for viewing. Participant in administrative proceedings has the right to look at the file in terms of personal data protection, which is not anonymized, unless a special law provides otherwise (e.g. § 100 paragraph 6 of the no. 18/2018 Coll. on the protection of personal data and on amendments and additions to certain laws¹).

In relation to the delivery of documents as well as to viewing the administrative file, it appears problematic third category of participant in administrative proceedings defined in § 14 par. 1 correct order. According to this provision, a party to the administrative proceedings is also the one who claims that he can be decision in their rights and legally protected interests or obligations directly affected, until the contrary is proven. Such a category of participant in administrative proceedings is equivalent to other categories of participants in administrative proceedings defined in § 14 of the administrative procedure order and has the same rights and obligations as other participants in administrative proceedings, and that is until the time when the administrative authority legally decides on his exclusion from the administrative procedure. For this reason, even in relation to such a participant in the administrative procedure, the above procedure is followed in the specified manner, both during delivery and when exercising the right to inspect to the administrative file.

We point out that in both cases by publishing or making available personal data within the delivered documents or within the documents that are provided for reference, the personal data contained in these documents do not lose the status of personal data and for their possible further processing, it is necessary to have adequate legal basis in the sense of Art. 6 Regulations² or § 13 of Act no. 18/2018 Coll.

According to § 100 par. 6 of Act no. 18/2018 Coll. if the proposal does not contain a request to conceal the identity of the

proposer,

the office processes the proposal without concealing the personal data specified in the proposal. If there is a request for secrecy in the proposal

identity, but the character of the proposal does not allow it to be completed without providing some information about the person making the proposal

submitted, the office will notify the applicant of this after discovering this fact, while at the same time notifying him that in the proposal

will continue only if, within the specified period, the applicant gives the office consent to provide data or data about his/her to the person needed to complete the proposal.

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Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in

processing of personal data and on the free movement of such data, which repeals Directive 95/46/EC (general data protection regulations).

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