

[doc. web n. 9696645]

Injunction order against the Municipality of Rosta - 22 July 2021

Record of measures

n. 281 of 22 July 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / EC, "General Data Protection Regulation" (hereinafter "RGPD");

GIVEN the d. lgs. June 30, 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter the " Code ");

GIVEN the general provision n. 243 of 15/5/2014 containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities", published in the Official Gazette. n. 134 of 12/6/2014 and in www.gpdp.it, doc. web n. 3134436 (hereinafter "Guidelines on transparency");

GIVEN the Regulation n. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved by resolution no. 98 of 4/4/2019, published in the Official Gazette n. 106 of 8/5/2019 and in www.gpdp.it, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN the documentation in the deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and operation of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web n. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. Introduction

This Authority has received a complaint from Mr. XX (hereinafter "complainant"), with which a violation of the legislation on the protection of personal data was complained of deriving from the dissemination of personal data on the institutional website of the Municipality of Rosta.

Specifically, from the preliminary verification carried out by the Office, it emerged that:

1. at the url <https://...>, referring to the domain of the aforementioned Municipality (comune.rosta.to.it), it was possible to view the document entitled "XX", containing - in addition to the data of the professional in charge - incidentally also the personal data of a third party unrelated to the declaration, i.e. the complainant Mr. XX (such as their name, residence and information relating to the submission of an appeal against the municipality for the annulment of a trade union ordinance of unusability);

2. at the url <https://...>, a page was opened containing the civic and documental access register (XX), divided by fields (number, date, entry prot., Type of access, subject, requesting name, competent manager, counter-interested parties YES / NO, outcome, reasons for refusal, notes), in which the name of the applicant was also clearly indicated, including Mr. XX.

Furthermore, during the same investigation, it was verified that on the institutional website of the Municipality of Rosta, in the "Transparent administration" section (<https://...>), in the "Other contents" / "Civic access" area, present the link called "XX", through which it was possible to access a web page containing the files relating to all accesses made from XX to XX, at the following url:

a) <http://...>

b) <http://...>

c) <http://...>

d) <http://...>

e) <http://...>

f) <http://...>

g) <https://...>

As a sample, the file relating to the «XX» ([url https://...](https://...)) was opened, which reported the same fields described in the previous point no. 2, with the clear personal data of the applicants.

From the documents it appears that Mr. XX had previously contacted the Municipality of Rosta regarding the dissemination of

his personal data and that the administration found the request with note prot. n. XX of the XX in a not completely conclusive way.

2. The legislation on the protection of personal data

Pursuant to the relevant regulations, "personal data" is "any information concerning an identified or identifiable natural person ("interested")" and "the natural person who can be identified, directly or indirectly, with particular reference to a identifier such as the name, an identification number, location data, an online identifier or one or more characteristic elements of its physical, physiological, genetic, psychic, economic, cultural or social identity "(art. 4, par. 1, No. 1, of the GDPR).

Public entities, such as the Municipality, may disclose "personal data" only if this operation is provided for "by a law or, in the cases provided for by law, by regulation" (Article 2-ter, paragraphs 1 and 3, of Code), in compliance - in any case - with the principles of data protection, including that of "minimization", according to which personal data must be "adequate, relevant and limited to what is necessary with respect to the purposes for which which are processed "(Article 5, paragraph 1, letter c, of the GDPR).

In this regard, with particular reference to the case submitted to the attention of this Authority, it is envisaged that "The administrations will make known, by inserting the lists of their consultants, indicating the subject, the duration and remuneration of the assignment as well as the attestation of the verification of the non-existence of situations, even potential, of conflict of interest "(Article 53, paragraph 14, of Legislative Decree no. 165 of 30 / 3/2001).

As for the access register, also the National Anti-Corruption Authority (ANAC) - in its own guidelines adopted in agreement with the Guarantor - indicated the possibility of it being set up at the institutions, specifying however that the "register contains the list of requests with the subject and the date and the relative outcome with the date of the decision and is published, obscuring any personal data present, and kept updated at least every six months in the Transparent Administration section, "other contents - civic access" of the website institutional "(par. 9, Resolution no. XX of XX containing the " Guidelines containing operational indications for the purpose of defining the exclusions and limits to civic access pursuant to art. 5 co. 2 of Legislative Decree 33 / 2013 », in Official Gazette no. 7 of 10/1/2017 and in

http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/_Atto?ca=6666. 8.2.b. of the Circular of the Minister for the Public Administration n. 1 of 2019, on "Implementation of the rules on generalized civic access (so-called FOIA)", at http://www.functionpubblica.gov.it/sites/functionpubblica.gov.it/files/Circolare_FOIA_n_1_2019.pdf).

3. Preliminary assessments of the Office on the processing of personal data carried out.

Following the checks carried out on the basis of the elements acquired and the facts that emerged as a result of the investigation, as well as subsequent evaluations, the Office with note prot. n. XX of the XX has ascertained that the Municipality of Rosta - by disseminating the data and personal information contained in the documents published online described above - has carried out a processing of personal data that does not comply with the relevant regulations on the protection of personal data contained in the RGPD. Therefore, with the same note the violations carried out (pursuant to art.166, paragraph 5, of the Code) were notified to the aforementioned Municipality, communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGPD and inviting the aforementioned administration to send to the Guarantor defensive writings or documents and, if necessary, to ask to be heard by this Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as art.18, paragraph 1, of law no. 689 of 11/24/1981).

4. Defensive memories.

The Municipality of Rosta, with the note prot. XX of the XX, sent to the Guarantor its defense writings in relation to the notified violations.

In this regard, please note that, unless the fact constitutes a more serious crime, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable pursuant to art. 168 of the Code, entitled "False statements to the Guarantor and interruption of the performance of the tasks or the exercise of the powers of the Guarantor".

Specifically, with regard to the conduct held, it was highlighted, among other things, that:

- "Having acknowledged the objections formulated [by the Guarantor], on the XXth a meeting with the DPO took place at the headquarters of the Entity (as per the minutes drawn up on the same date), at the outcome of which, all the appropriate corrective actions were assessed to be undertaken to eliminate the criticalities found, it was deemed appropriate to suspend, as a precaution and with immediate effect, the publication of the documents subject to verification, by inserting the words "page in progress" on the institutional website "
- with regard to the excess of some personal data contained in the document relating to the "XX", the "publication of the declaration in question took place on the basis of a legal obligation imposed on the Data Controller";
- «the violation concerns a single interested party (the complainant Mr. XX) and does not concern personal data as per articles

9 and 10 GDPR ";

- "Obviously, with this publication, this publication is not intended to cause any harm to the rights and freedoms of the applicant, but simply to fulfill an obligation of transparency, the" imperishable "and absolutely non-voluntary character of such treatment ";

- "As for the actual corrective action taken, it should be noted that the Entity - in addition to having immediately removed the declaration in question from the institutional website - subsequently republished the same with the obscured data of the interested party";

- "The Entity also announces that [...] a request has been made to the Google company to de-index the file url [https: // ...](https://...) [...]";

- with regard to the "disclosure of the personal data of the complainant and other interested parties - contained in the" Civic access register "[..., the] alleged violation, unlike the previous one, concerns a higher number of interested parties, but like the above does not concern personal data belonging to particular categories referred to in art. 9 GDPR or relating to criminal convictions and offenses referred to in art. 10 GDPR ";

- "Even with reference to this second charge - since the Entity has no reason and intention to infringe the rights of the applicants - the disputed treatment may at most be framed in the context of the fault but not by way of willful misconduct";

- "As for the actual corrective measures taken, it should be noted that the Entity - in addition to having immediately removed the contested documents from the institutional website - has [...] fully revised in accordance with the ANAC guidelines and the Public Ministry Circular Administration n. 1 of 2019, obscuring all personal data that may be present. In particular, in the new version (to date not yet published but which is shown below in an extract purely by way of example) the "requesting" column has been completely eliminated and the "subject" column modified, so as to eliminate even the root of the 'possible possibility of tracing back to a natural person';

"The Entity also announces that on 25 June 2021 (as per the communication already indicated), [...], a request was made to the Google company to de-index the [...] files [subject to dispute]"

5. Evaluations of the Guarantor

The issue that is the subject of the case brought to the attention of the Guarantor concerns the dissemination of data and personal information of the complainant in excess contained incidentally in the "XX" published online (such as name, residence of the complainant and information relating to the presentation of an appeal against the Municipality for 'cancellation of a trade

union ordinance of unusability), as well as of numerous interested parties who have formulated requests for access to the Municipality contained in the register of civic and documental accesses (XX years) also published online (with indication of the following fields: number, date , entry protocol, type of access, object, applicant name, competent manager, counter-interested parties YES / NO, outcome, reasons for refusal, notes).

As part of the investigation opened in this regard by this Authority, the Municipality of Rosta confirmed, in its defense briefs, the online disclosure of the personal data described. In this regard, the entity represented the "absolutely non-voluntary [of] processing" carried out and the total absence of willful misconduct or the will to "cause any harm to the rights and freedoms of the instant". This would also be demonstrated by having immediately removed the disputed files and by having made a further request to Google to de-index them.

6. Outcome of the investigation relating to the complaint presented

For all of the above, the circumstances highlighted in the defense writings examined as a whole, certainly worthy of consideration for the purpose of evaluating the conduct, are not sufficient to allow the filing of this proceeding, since none of the hypotheses provided for by art. 11 of the Guarantor Regulation n. 1/2019.

This also considering that since 2014 the Authority, in the Guidelines on transparency and online publication mentioned above, has provided all pp.aa. specific indications on how to reconcile the transparency and publicity obligations of the administrative action with the right to the protection of the personal data of the interested parties; and that also in the ANAC Guidelines (par. 9, Resolution no. XX of the XX) and in the Circular of the Minister for Public Administration no. 1/2019 (par.8.2.b.), cited above, contains specific indications with reference to the publication of the access register (and the need for it not to contain personal data).

In this context, the preliminary assessments of the Office are confirmed with the note prot. n. XX of the XX the unlawfulness of the processing of personal data carried out by the Municipality of Rosta is noted, as:

1) the disclosure of the complainant's personal data contained in the document entitled «XX» of another professional, identified above under no. 1 of par. 1, is in contrast with the principle of "minimization" of data, which are not "limited to what is necessary with respect to the purposes for which they are processed" (ie the transparency of the "attestation of the verification of the non-existence of situations, also potential, of conflict of interest "of the consultant / collaborator of the entity), in violation of art. 5, par. 1, lett. c), of the GDPR;

2) the dissemination of the personal data of the complainant and of the other interested parties who have forwarded access requests to the Municipality - contained in the document identified under no. 2 of par. 1, as well as in "XX" present in the Transparent Administration section, at the URLs indicated in letters a) to h) of the same paragraph - it occurred in the absence of suitable regulatory conditions, in violation of art. 2-ter, paragraphs 1 and 3, of the Code (and in a manner that does not comply with the indications contained in the ANAC Guidelines and in the Public Service Circular referred to above in paragraph 2); as well as the basic principles of processing contained in articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller declared that he had removed the personal data object of the Office's dispute from the institutional website, without prejudice to what will be said on the application of the sanction administrative pecuniary, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

7. Adoption of the injunction order for the application of the pecuniary administrative sanction (Articles 58, paragraph 2, letter i; 83 of the GDPR)

The Municipality of Rosta appears to have violated Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR; as well as art. 2-ter, paragraphs 1 and 3, of the Code.

In this regard, art. 83, par. 3, of the RGPD, provides that «If, in relation to the same treatment or related treatments, a data controller or a data processor violates various provisions of this regulation, with willful misconduct or negligence, the total amount of the pecuniary administrative sanction does not exceeds the amount specified for the most serious violation '.

In the present case, the violation of the aforementioned provisions - also considering the reference contained in art. 166, paragraph 2, of the Code - is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the GDPR, which therefore applies to the case in question.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGPD, as well as art. 166 of the Code, has the corrective power to "inflict a pecuniary administrative sanction pursuant to Article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, depending on the circumstances of every single case ". In this context, "the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166,

paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount, taking into account the elements provided for by art. 83, par. 2, of the GDPR.

In this sense, the detected conduct in violation of the regulations on the protection of personal data is of a negligent nature and involved the online dissemination of personal data for four years (considering that the publication of the access register dates back to June 2017), not belonging to particular categories or to criminal convictions or offenses (articles 9 and 10, of the RGPD). The Municipality of Rosta is a small body (almost 5,000 inhabitants), which asked to take into account the small number of employees in the workforce (which from the preliminary investigation turn out to be less than twenty). Following the request of the Office, the administration intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to remedy the violation, mitigating its possible negative effects. Furthermore, in the reply to the Guarantor, various technical and organizational measures implemented pursuant to art. 25-32 of the RGPD and, in any case, there are no relevant previous violations of the RGPD committed by the entity.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGPD, to the extent of € 2,200.00 (two thousand two hundred) for the violation of Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the RGPD, as well as of art. 2-ter, paragraphs 1 and 3, of the Code; as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same RGPD.

In relation to the specific circumstances of this case, relating to the dissemination of personal data online in the absence of a suitable legal basis and in violation of the principle of data minimization (Article 5, paragraph 1, letter c, GDPR), it is considered also that the ancillary sanction of the publication of this provision on the Internet site of the Guarantor, provided for by art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019

Finally, it is believed that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the processing carried out by the Municipality of Rosta in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Municipality of Rosta, in the person of the pro-tempore legal representative, with registered office in Piazza Vittorio Veneto, 1 - 10090 Rosta (TO) - C.F. 01679120012 to pay the sum of € 2,200.00 (two thousand two hundred) as a pecuniary administrative sanction for the violations mentioned in the motivation;

INJUNCES

to the same Municipality to pay the sum of € 2,200.00 (two thousand two hundred), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981.

Please note that the offender has the right to settle the dispute by paying - again in the manner indicated in the annex - of an amount equal to half of the sanction imposed, within the term referred to in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

HAS

- the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;

- the annotation in the internal register of the Authority of the violations and measures adopted pursuant to art. 58, par. 2, of the RGPD with this provision, as required by art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the RGPD, of the arts. 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, July 22, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei