

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

April

2021

DECISION

DKE.523.1.2021

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended), art. 160 sec. 1 and 2 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2019, item 1781) and art. 12 point 2, art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended, and of 2018, item 138), Art. 57 sec. 1 lit. a) and f) 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 (Journal of the EU L 119 of 04/05/2016, p. 1 and the Official Journal of the EU L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of Ms MK, regarding irregularities in the processing of her data personal by P. Spółka z oo and D. Sp. z o.o., President of the Personal Data Protection Office
refuses to accept the request.

JUSTIFICATION

The Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) received a complaint from Ms M. K., hereinafter referred to as: "the Complainant", about irregularities in the processing of her personal data by P. Spółka z o.o. hereinafter referred to as: "P". The complainant informed in the content of the complaint that while prolonging the contract with P. no. [...], hereinafter referred to as "the contract", on [...] February 2017, she had provided a photocopy of the ID card to courier D. Sp. z o.o., hereinafter referred to as: "D", the copy was lost and was not delivered to P. The applicant requested (quoted): „
„, checking the compliance of personal data storage by P. Spółka z o.o., hereinafter referred to as P. data with the provisions on the protection of personal data in connection with the loss of a copy [...] of the ID card when signing the contract [...], obliging P. to clarify the matter of the loss of a copy [...] of his ID card when signing this contract,

drawing legal consequences in relation to persons responsible for the information provided,

informing me on an ongoing basis about the results of the conducted proceedings. "

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office (hereinafter also referred to as: "the President of the Office"), in letters of [...] November 2019, asked both P. and D. for explanations regarding the event described in complaint and accordingly found the following.

1. P., in a letter of [...] December 2019, confirmed that the event presented in the complaint took place and does not currently process the complainant's personal data in the form of a photocopy of the identity card obtained at the conclusion of the contract. Moreover, from the correspondence between the applicant and P. attached to that letter, it follows that:

- P. received explanations from D. that, as a result of a mistake, the courier did not include a photocopy of the applicant's ID card with the set of documents and that this action was without malicious intent and was not deliberate;

- P. entrusted the processing of personal data to the Complaining company D. on the basis of an entrustment agreement specifying the manner and principles of personal data processing pursuant to art. 31 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Act of 1997".

2. D. in her explanations contained in the letter of [...] December 2019, stated that (quoted): "Due to the passage of time, it is difficult to establish the facts indicated in the complaint". However, it follows from this letter that D. was able to establish that the documents obtained by the courier when concluding the contract by the applicant were sent back on [...] April 2017 to P. by registered mail as incorrectly confirmed, with the status N - no photocopy of the ID card . Moreover, D. explained that (quoted): "most likely the copy of the identity card had been taken from the complainant by the courier, and its loss had already occurred in the terminal of the Company. According to the accepted practice, documents found in the Company's warehouses, which cannot be assigned to any shipment using the information contained therein, are then placed in specially designed and closed containers, and then disposed of. According to the introduced procedure, before disposal, the containers are opened in the presence of a specially appointed commission, whose task is the final verification of documents before their disposal ". In addition, the content of the above-mentioned D.'s letters and the attached copy of the e-mail correspondence between P. and D. confirm that P. asked D. for explanations regarding the parcel, which should include a photocopy of the applicant's ID card. In these facts, the President of the Personal Data Protection Office considered the following.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data (Journal of Laws 2019, item

1781), hereinafter referred to as "u.o.d.o.", entered into force. Pursuant to Art. 160 sec. 1-3 of this Act, proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, are conducted by the President of the Personal Data Protection Office on the basis of the Act, in accordance with the principles set out in the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "Kpa". At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted on the basis of the Act of 1997 From May 25, 2018, also Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679". Pursuant to Art. 57 sec. 1 of Regulation 2016/679 "without prejudice to other tasks set out under this Regulation, each supervisory authority on its territory shall monitor and enforce the application of this Regulation and handle complaints lodged by the data subject or by an entity, organization or association ..., in the relevant to the extent that it conducts proceedings on these complaints and informs the complainant within a reasonable time about the progress and results of these proceedings ... "(points a and f).

According to the provision of Art. 18 sec. 1 of the Act of 1997, in the event of violation of the provisions on the protection of personal data, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying , disclosure or non-disclosure of personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data.

Pursuant to Art. 36 of the Act of 1997, the data controller is obliged to apply technical and organizational measures ensuring the protection of personal data being processed, appropriate to the threats and categories of data protected, and in particular, should protect the data against unauthorized disclosure, removal by an unauthorized person, processing in violation of the Act and alteration, loss, damage or destruction. However, according to the content of the provision of Art. 31 sec. 3 of the Act of 1997, the entity to which the data controller has entrusted the processing of data on the basis of a contract, is obliged to take

measures to secure the data set before starting data processing, referred to, inter alia, in art. 36 of this Act and in terms of compliance with these provisions, this entity is responsible as the data controller. In the case of entrusting the processing of personal data, the responsibility for compliance with the provisions of the Act of 1997 rests with the data controller, which does not exclude the responsibility of the entity entrusted with the data for processing, for the processing of data contrary to this agreement (Article 31 (4) of the Act of 1997) .

The above-mentioned provisions show that the obligation to properly secure the processed personal data, including against their loss, lies both with the data controller and the entity entrusted with the processing of personal data.

In the course of these administrative proceedings, an event was found consisting in the loss of a photocopy of the applicant's ID card, which the applicant provided to courier D. in connection with her contract with P. It appears from the explanations submitted in this case that P. did not receive a copy of the applicant's identity card, and the disappearance took place when the copy of this document was in the possession of D. However, D. was not able to establish what really happened to the copy of the applicant's ID card - she indicated that it was highly probable that the copy of this document had been disposed of, in accordance with procedure applicable in D.

On the other hand, it is indisputable in the present case that there was a breach of the security of the processing of the complainant's personal data, as a result of which the complainant's personal data was lost, and the fact that the event occurred as a result of the direct action of D. . does not release P., as the data controller, from the responsibility for complying with the provisions of the Act of 1997 in connection with the processing of the complainant's personal data.

However, in the opinion of the President of the Office in the present case, there are no premises for issuing an order to restore the legal status pursuant to Art. 18 of the 1997 Act. It should be emphasized that this event was of a one-off nature, was not intentional and occurred as a result of human error. In the circumstances of the case, the President of the Office decided that there were no grounds to suppose that a similar event would repeat itself in the future, and therefore there was no need to order additional measures to protect personal data. It is worth pointing out here that under the provisions of the Act of 1997, the corrective actions of the personal data protection authority have been limited to issuing orders to restore the legal status, listed in Art. 18 of the same act. However, they did not provide for the possibility of the authority to apply such remedial measures as, for example, issuing a reminder or imposing an administrative fine, which measures were introduced only by the provisions of Regulation 2016/679, and they cannot be applied in these proceedings.

Regarding the Complainant's request for an inspection of the compliance of the storage of personal data by P., it should be noted that the decision to conduct the inspection procedure falls within the autonomous competence of the President of the Personal Data Protection Office, and therefore the inspections are not carried out at the request of the person concerned. The President of the Office for Personal Data Protection decided that in this situation there were no grounds to initiate the inspection procedure ex officio.

At the same time, it should be pointed out that the President of the Office does not have the power to draw legal consequences against persons personally responsible for the violation of the provisions of the Act of 1997.

Therefore, it is justified to issue a decision refusing to comply with the applicant's requests. In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-07-12