

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

March

2022

## DECISION

DKE.561.7.2022

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws 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. 58 sec. 1 lit. a) and lit. 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 ) (Journal of Laws UE L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2, and in the Official Journal of the European Union L 74 of 04.03. 2021, p. 35), following administrative proceedings to impose an administrative fine on S. Sp. z o.o., President of the Personal Data Protection Office,

gives a reminder S. Sp. z o.o., for violation of the provisions of Art. 58 sec. 1 lit. a) and lit. e) Regulation 2016/679 of the European Parliament and of the Council 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 (Journal of Laws UE L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2, and in the Official Journal of the European Union L 74 of 04/03/2021) , page 35) hereinafter referred to as "Regulation 2016/679", consisting in failure to provide the President of the Personal Data Protection Office with access to personal data and information necessary for the performance of his tasks.

## Justification

## Facts

The Office for Personal Data Protection received a complaint from Mr. W. Ś. (Hereinafter referred to as: "the Complainant"), about irregularities in the processing of his personal data consisting in failure by S. Sp. z o.o. (hereinafter referred to as the

"Company"), the information obligation under Art. 15 sec. 1 and 3 of Regulation 2016/679.

The President of the Personal Data Protection Office (hereinafter "the President of the Personal Data Protection Office") as part of the administrative procedure initiated to consider the complaint (reference number [...]), in letters of [...] July 2021 and [...] September 2021 asked the Company to comment on the content of the complaint and to provide explanations:

when (please indicate the exact date), on what legal basis (please indicate the specific legal provision / s), for what purpose and to what extent (please list the categories / types of data), the Company obtained the Complainant's personal data; if the complainant's personal data was obtained by the Company only as a result of informing it by the President of the Personal Data Protection Office about the complainant's complaint - please indicate this circumstance in the content of the submitted explanations.

whether the Company is currently processing the complainant's personal data, and if so, on what legal basis (please indicate a specific legal provision / s), for what purpose, to what extent (please list the categories / types of data) and until when the data will be processed; Note: If personal data are processed on the basis of art. 6 sec. 1 lit. c GDPR, you should indicate a specific legal provision from which the obligation to process data arises.

whether the Complainant asked the Company to fulfill the information obligation under Art. 15 sec. 1 GDPR, and if so, what was the Company's response (please send correspondence between the Company and the Complainant in the above-mentioned scope) and further actions; in the case of submitting the above-mentioned the application in a different form (e.g. orally), please indicate this circumstance in the content of the submitted explanations.

The letter of [...] July 2021 - after two notifications [...] in July 2021 and [...] July 2021 - returned to the Office with the annotation "The return was not received on time", in therefore, it was deemed delivered to the Company in accordance with Art. 44 § 4 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws 2021, item 735, as amended) (hereinafter referred to as "k.p.a."). The letter of [...] September 2021 - after double notification of [...] September 2021 and [...] September 2021 - returned to the Office with the annotation "The return was not made on time", in therefore it was also deemed delivered to the Company in accordance with Art. 44 § 4 of the Code of Civil Procedure

In a letter of [...] September 2021, the Company was informed that the lack of a comprehensive response to the summons may result - in accordance with Art. 83 sec. 4 lit. a) or 83 sec. 5 lit. e) of Regulation 2016/679 - imposing an administrative fine on the Company for violation of failure to provide access to personal data and information necessary for the President of the

Personal Data Protection Office to perform his tasks.

The above facts of the case were determined by the President of the Personal Data Protection Office on the basis of official correspondence between the Company and the President of the Personal Data Protection Office, contained in the files of the proceedings with reference number [...]. This correspondence reflects all the attempts by the President of the Personal Data Protection Office to obtain access to information necessary for the performance of his tasks, i.e. in this case - to consider the case number [...].

Due to the failure by the Company to provide the information necessary to settle the case no. [...], the President of UODO, in a letter of [...] February 2022, initiated ex officio against the Company - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679 - administrative proceedings to impose an administrative fine on the Company (reference number DKE.561.7.2022). The letter contained an instruction on the possibility of imposing on the Company - in the absence of a comprehensive response to this request - an administrative fine pursuant to Art. 83 sec. 5 lit. e) of Regulation 2016/679 in connection with the failure to provide access to personal data and information necessary for the President of the Personal Data Protection Office to perform his tasks (Article 58 (1) (a) and (b) of the GDPR) e) of Regulation 2016/679). In the above-mentioned In writing, the Company was also informed that if it provided exhaustive explanations in the proceedings with reference number [...], to be provided by the President of the Personal Data Protection Office and justify the previous failure to respond to these summons, this circumstance in the proceedings with reference number DKE.561.7.2022 may have a mitigating effect on the amount of the administrative fine or may result in waiving its imposition.

In response to the letter informing about the initiation of proceedings to impose an administrative fine on the Company, the Company, in a letter received by the Office on [...] March 2022, provided exhaustive explanations, which were requested by the President of UODO in letters from [...] July 2021 and [...] September 2021. The explanations of the Company allowed the President of the Personal Data Protection Office to conduct further proceedings in case no. [...]. The company also justified the reasons for its silence in the proceedings conducted under reference number [...]. She indicated that she was not responsible for correspondence. The company from [...] May 2021, although it did not change the address of its registered office - it changed the premises (room) - and moved to the upper floor in the building at the same address. The above change resulted in an unsuccessful attempt to deliver her correspondence by a postal worker who, out of "habit", tried to deliver it to the wrong room. During this period, there was a change of the postman, which was not properly implemented, because there are 8

companies in the building at the [...] address, but he did not know to which room the Company moved its activities. The company indicated that in the above-mentioned For reasons unknown to her, she also did not receive a notification. The company informed that due to the prevailing pandemic, it had implemented the obligation to work remotely, and the presence of a person authorized to receive correspondence was ensured at the company's headquarters. The failure to collect the correspondence by the Company was not deliberate and deliberate, and was the result of a fatal coincidence. The company assured that it would make every effort to prevent such a situation from happening again in the future and requested that the administrative fine be waived. At the same time, the Company applied for an extension of the deadline for the presentation of the financial statements requested by the President of the Personal Data Protection Office or another document presenting the amount of turnover and the financial result achieved by the Company in 2021. It indicated that, according to the information from the entity servicing the Company in the field of accounting, the report will be ready between [...] March 2022 and [...] April 2022, while the statutory deadline for its preparation is [...] June 2022.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

#### Legal justification

Pursuant to Art. 57 sec. 1 lit. a) of Regulation 2016/679, the President of the Personal Data Protection Office - as a supervisory authority within the meaning of art. 51 of the Regulation 2016/679 - monitors and enforces the application of this regulation on its territory. As part of his competences, the President of the Personal Data Protection Office examines, inter alia, Complaints brought by data subjects shall investigate these complaints to an appropriate extent and inform the complainant of the progress and the outcome of these proceedings within a reasonable time (Article 57 (1) (f)). In order to enable the performance of such defined tasks, the President of the Personal Data Protection Office has a number of specified in Art. 58 sec. 1 of Regulation 2016/679, the right to conduct proceedings, including the right to order the administrator and the processor to provide all information needed to perform its tasks (Article 58 (1) (a)) and the right to obtain access from the administrator and the processor to all personal data and all information necessary for the performance of its tasks (Article 58 (1) (e)).

Violation of the provisions of Regulation 2016/679 consisting in failure to provide access by the administrator or processor to the data and information referred to above, resulting in the violation of the authority's rights specified in art. 58 sec. 1 is subject to - in accordance with Art. 83 sec. 5lit. e) in fine of Regulation 2016/679 - an administrative fine of up to EUR 20,000,000, and

in the case of an enterprise - up to 4% of its total annual worldwide turnover from the previous financial year, with the higher amount being applicable. In addition, the President of the Personal Data Protection Office is entitled to a number of provisions specified in Art. 58 sec. 2 remedial powers, including reminders to the administrator or processor in the event of violation of the provisions of Regulation 2016/679 by processing operations. The President of the Personal Data Protection Office, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679 may be considered justified to provide the administrator or processor with a reminder in the event of a breach of the provisions of Regulation 2016/679, including the provisions of art. 58 sec. 1 lit. a) and e) of this legal act. Pursuant to recital 148 of Regulation 2016/679, for more effective enforcement of the Regulation, sanctions, including administrative fines, should be imposed for breaches of the Regulation, in addition to or in place of the appropriate measures imposed by the supervisory authority under this Regulation. If the infringement is minor, the fine may be replaced by an admonition. However, due attention should be paid to the nature, gravity and duration of the breach, whether the breach was not intentional, the steps taken to minimize the harm, the degree of liability or any prior breach, how the supervisory authority became aware of on a breach, on compliance with the measures imposed on the controller or processor, on the application of codes of conduct, and on any other aggravating or mitigating factors.

Referring to the above-mentioned provisions of Regulation 2016/679 to the facts established in the present case, and described at the beginning of this decision, it should be stated that the Company - the complainant's personal data administrator - as a party to the proceedings conducted by the President of the Personal Data Protection Office (UODO) no. [...] undoubtedly breached the obligation resulting from Art. 58 sec. 1. lit. a) and e) of Regulation 2016/679, i.e. the obligation to provide the President of the Personal Data Protection Office with access to personal data and information necessary for the performance of his tasks - in this case, to the substantive resolution of the case. It should be emphasized, however, that the Company was not aware of the administrative proceedings pending against it before the President of the Personal Data Protection Office (UODO), under reference number [...] on the breach of personal data protection, in which he is called to respond to the content of the complaint and provide information necessary to resolve the case. The information about the proceedings pending before the President of the Personal Data Protection Office (UODO) was only obtained from the letter of [...] February 2022, with which these proceedings were initiated. Then, as a result of obtaining information about pending proceedings against it, the Company submitted exhaustive explanations allowing the President of the Personal Data Protection Office to conduct further proceedings in the case no. [...]. In the opinion of the President of the Personal Data Protection Office,

the lack of reaction of the Company to the requests for explanations was not deliberate, but caused by a change in the organization of work at the Company's seat and temporary difficulties in delivering correspondence to the Company by a new postal employee. The reasons for the initial lack of cooperation with the supervisory body indicated by the Company should be considered as credible and having a significant impact on the assessment of the Company's behavior in the context of choosing the sanction applied to it in these proceedings. In the opinion of the supervisory body, the Company's follow-up assets show that it is ready to continue to cooperate with it. At this point, it should also be pointed out that the very initiation of the proceedings to impose an administrative fine and the real perspective of imposing a financial penalty have become a clear signal for the Company that further evasion of the obligations imposed by the provisions of Regulation 2016/679 will inevitably lead to the application of the most severe sanctions provided for by these provisions.

Bearing in mind the above, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, the President of the Personal Data Protection Office found it justified to provide the Company with a reminder regarding the infringement of the provisions and art. 58 sec. 1 lit. a) and e) of Regulation 2016/679, assuming that in the light of the criteria set out in Art. 83 sec. 2 of Regulation 2016/679, it will be effective and sufficient. It should be noted, however, that in the event of a similar event occurring in the future, each admonition issued by the President of the Personal Data Protection Office against the Company will be taken into account when assessing the premises for a possible 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 Personal Data Protection Office 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 with the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. In the proceedings before the Provincial Administrative Court, the party has the right to apply for the right of assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of a party submitted prior to the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

