

Warsaw, on 27

September

2022

Decision

DKE.561.22.2022

Based on Article. 104 § I of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 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) in connection with art. 57 sec. 1 lit. a) and h), Art. 31 and art. 58 sec. 1 lit. a) and ... e) and Art. 58 sec. 2 lit. b) Regulation of the European Parliament and of the EU Council 2016/679 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 / EC (General Data Protection Regulation) (OJ L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the EU L 127 of 23/05/2018, p. 2, and in the Official Journal of the EU L 74 of 04.03. 2021, p. 35), after conducting administrative proceedings regarding the imposition of an administrative fine on Z. Sp. z o.o., President of the Personal Data Protection Office,

gives a reminder to Z. Sp. z o.o., for violation of the provisions of art. 31 and art. 58 sec. 1 lit. a) and ... e) Regulation of the European Parliament and of the EU Council 2016/679 and EU Council 2016/679 of 27 April 2016 on the protection of natural persons 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, with changes announced in the Official Journal of the EU L 127 of 23/05/2018, p. 2, and in the Official Journal of the EU L 74 of 04/03/2021 , p. 35) hereinafter referred to as "Regulation 2016/679", consisting in the lack of cooperation with the President of the Office for Personal Data Protection in the performance of his tasks and in the failure to provide access to personal data and information in the proceeding with reference number [...].

Justification

Facts

The Office for Personal Data Protection received a complaint from Ms. A.S. (hereinafter referred to as: the Complainant), for irregularities in the processing of her personal data by Z. Sp. z o.o. (hereinafter referred to as the "Company"), consisting in

using its e-mail address [...] after termination of the employment relationship.

President of the Office for Personal Data Protection (hereinafter "President of the Personal Data Protection Office") as part of the initiated administrative proceedings conducted to consider the complaint (under reference number [...], letters of [...] April 2022 and June [...] 2022, addressed to the address of the Company's registered office disclosed in the National Court Register ([...]), asked the Company to respond to the content of the complaint and to provide explanations:

whether the Company processes or processed the Complainant's personal data in the scope of the e-mail address [...] after termination of the employment relationship, and if so, for what purpose and on what legal basis;

whether the Complainant asked the Company to delete her personal data regarding the e-mail address [...], and if so, when and how the Company responded to this request (please send a copy of the response given to the Complainant). In the event of failure to provide the Complainant with a response to the above request, please explain the reasons for this.

In the letter of [...] June 2022, the Company was instructed that the lack of an exhaustive response to the request may result in lack of cooperation with the President of the Office in the performance of his tasks and failure to provide access to personal data and information necessary for the President Office to carry out its tasks, imposing on the Company - in accordance with art. 83 sec. 4 lit. a) or Art. 83 sec. 5 lit. e) GDPR - 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 applicable. The letters of April [...] 2022 and June 2022 were received by the Company in April [...] 2022 and [...] June 2022, respectively. The Company did not respond to above calls.

In the absence of a response to the requests of the President of the UODO, these administrative proceedings were initiated under reference number DKE.561.22.2022 - on the imposition of an administrative fine on the Company for violation of Art. 31 and art. 58 sec. 1 lit. a) and e) of Regulation 2016/679 due to the lack of cooperation with the President of the UODO in the performance of its tasks by this authority and failure to provide access to personal data and information necessary for the President of the UODO to perform its tasks.

The letter of [...] August 2022 regarding the initiation of the administrative proceedings in question and the collection of evidence in the case was received by the Company [...] August 2022. The letter indicated that if the Company provided effectively exhaustive explanations, requested by the President of the UODO in the letters of [...] April 2022 and [...] June 2022, this circumstance may have a mitigating effect on the amount of the administrative fine imposed in these proceedings or may

cause a withdrawal from its imposition.

In the letter of [...] August 2022, the Company provided exhaustive answers to the questions addressed to it in the case with reference number [...].

In turn, in the letter of [...] August 2022, the Company requested a waiver of imposing an administrative fine on the Company due to the lack of cooperation with the President of the Office for Personal Data Protection in the performance of its tasks by this body and failure to provide information necessary to the President of the UODO to carry out these tasks.

In the letter of August [...] 2022, the Company explained that the lack of response to the call for explanations of April [...] 2022 and [...] June 2022 was not due to lack of willingness to cooperate with the President of the UODO, but it was caused by a human error and a difficult flow of information related to personnel changes within the Company. The company indicated that the person responsible at that time for responding to the summons did not properly fulfill his duties and did not inform the newly employed person about the need to respond to the summons.

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

Legal justification

In accordance with art. 57 sec. 1 lit. a) of Regulation 2016/679, the President of the UODO - as a supervisory authority within the meaning of art. 51 of Regulation 2016/679 - monitors and enforces the application of this regulation on its territory. As part of his competence, the President of the UODO considers, among others: complaints lodged by data subjects, conducts investigations into these complaints to the appropriate extent and informs the complainant about the progress and results of these proceedings within a reasonable time (Article 57(1)(f) of Regulation 2016/679). In order to enable the implementation of such tasks, the President of the UODO is entitled to a number of tasks specified in art. 58 sec. 1 of Regulation 2016/679, rights in the field of conducted proceedings, including the right to order the administrator and the processor to provide all information needed to perform its tasks (Article 58(1)(a) of Regulation 2016/679) and the right to obtain from the administrator and the processing entity access to all personal data and all information necessary to perform its tasks (Article 58(1)(e) of Regulation 2016/679). In addition, the President of the UODO is entitled to a number of specified in art. 58 sec. 2 of Regulation 2016/679 corrective powers, including issuing reminders to the controller or processor in the event of violation of the provisions of Regulation 2016/679.

Violation of the provisions of Regulation 2016/679 consisting in failure by the controller or processor to provide access to the data and information referred to above, resulting in a violation of the authority's rights set out in art. 58 sec. 1 (including the right to obtain data and information necessary to perform its tasks) is subject to - in accordance with art. 83 sec. 5 lit. 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 applicable. It should also be pointed out that the controller and the processing entity are obliged to cooperate with the supervisory authority as part of the performance of its tasks, as provided for in art. 31 of Regulation 2016/679. The President of the UODO, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679 may consider it justified to issue a warning to the controller or processor regarding the identified violation of the provisions of art. 31 and art. 58 sec. 1 lit. a) and e).

Referring the above-mentioned provisions of Regulation 2016/679 to the facts established in this case and described at the beginning of the justification of this decision, it should be stated that the Company - as a party to the proceedings conducted by the President of the UODO, reference number [...] undoubtedly violated the obligation to cooperate with the President of the UODO and the obligation to provide the President of the UODO with access to personal data and information necessary to perform his tasks - in this case, to substantively resolve the case.

The President of the UODO twice called on the Company to provide explanations. The first of these summons was delivered to the Company [...] in April 2022, and the second [...] in June 2022. None was answered within the specified time limits of 7 days from the date of their delivery. Preventing access to the information requested by the President of the UODO from the Company prevented a thorough examination of the case with reference number [...] and resulted in the prolongation of the proceedings, which, in turn, is in contradiction with the basic principles governing administrative proceedings - set out in Art. 12 sec. 1 k.p.a. principles: thoroughness and speed of conduct. This omission by the Company made it necessary to initiate these proceedings regarding the imposition of an administrative fine. However, in response to the information about the initiation of these proceedings, the Company resumed cooperation with the President of the UODO by sending detailed explanations in the proceedings with reference number [...] which enabled the President of the UODO to continue the proceedings in this case. In addition, the Company submitted explanations justifying the reasons for the lack of cooperation with the President of the UODO, namely in the explanations it indicated that the Company's lack of response to the request for clarifications of April 2022 and June 2022 was not due to the lack of willingness to cooperate with the President of the UODO, but it was caused by

human error and the hindered flow of information related to personnel changes within the Company. In addition, the Company indicated that the person responsible at that time for responding to the summons did not properly fulfill his duties and did not inform the newly employed person about the need to respond to the summons.

As mentioned above, there is no doubt that the Company's conduct violated the provisions of Regulation 2016/679. The justification provided by the Company for not responding to the request of the President of the UODO does not relieve it of responsibility for the omission found. At the same time, however, the reasons indicated by the Company for the initial lack of cooperation with the supervisory authority should have been taken into account as credible and having a significant impact on the assessment of the Company's behavior in the context of the choice of sanctions applied to it in these proceedings. In the facts in question, apart from the lack of response to requests for explanations - which was supplemented by the Company as a result of the initiation of these proceedings - there were no other indications of the Company's lack of will to cooperate with the President of the UODO. In the opinion of the President of the UODO, the above infringement was unintentional. The circumstances of the case, and in particular the subsequent attitude of the Company, allow us to conclude that its initial tardiness was not due to ill will, nor was it intended to consciously hinder the proceedings. The reason for the Company's lack of reaction to the calls addressed to it for explanations in the case No. [...] was a human error and a hindered flow of information related to personnel changes within the Company. In the opinion of the authority, the Company's actions were not aimed at the lack of will to cooperate with the President of the UODO or at intentionally hindering the performance of the President of the UODO's duties.

The subsequent, active attitude of the Company, in particular providing explanations to the case with reference number [...], including an explanation of the reasons for the lack of response to requests for explanations, indicates readiness to continue cooperation with the President of the UODO. In the opinion of the supervisory authority, the mere initiation of proceedings to impose an administrative fine and the real prospect 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 strictest sanctions provided for in these provisions. Nevertheless, in order to avoid similar situations in the future, the President of the UODO indicates that any obstacles preventing the Company from fulfilling its obligations towards the personal data protection authority in a timely manner should be immediately reported by the Company as soon as they occur.

Considering the above, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, according to which each supervisory authority has the right to issue a warning to the controller or processor in the scope of the proceedings conducted, the President of the UODO considered it justified to issue a warning to the Company regarding the violation of the provisions of art. 31 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. However, it should be noted that in the event of a similar event in the future, each reminder issued by the President of the UODO against the Company will be taken into account when assessing the grounds for a possible imposition of an 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 UODO 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 to the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the UODO (address: ul. Stawki 2, 00 - 193 Warsaw). The entry fee for a complaint is PLN 200. In the proceedings before the Provincial Administrative Court, the party has the right to apply for the right to assistance, which includes exemption from court costs and the appointment of a lawyer, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of the Party submitted before the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

Print article

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