

UOOU-2744/21

The Office together with the Czech Land Surveying and Cadastral Office (ČÚZK) carried out an inspection of the processing of personal data within the scope of services provided by the inspected person. The inspected person provided, among other things, services based on the processing of cadastral data, and the inspection primarily focused on these services.

The inspected person categorically denied that he was in the position of an administrator within the scope of the services in which he processes the personal data of real estate owners in the Czech Republic. Furthermore, at the end of 2021, the audited person deleted from its servers the software that ensured the operation of the services that were the subject of the audit and all data related to it.

As part of the inspection, 427,300 social security numbers were also found in the data extracted from the IT service provider for the inspected person. The argument of the controlled person that he is not in the role of administrator of the personal data of real estate owners was refuted on the basis of facts established, among other things, based on the study of data obtained from the provider of IT services for the controlled person and on the basis of data provided by ČÚZK. From these data it emerged that the controlled person did not use personal data available through official remote access to the real estate cadastre within the scope of the services provided, but had to use its personal data database, thus being without any doubt in the position of personal data manager, which processed at least the name, surname, address of permanent residence, list of owned real estate. From this database, data was subsequently obtained for individual clients who used the subject services of the controlled person.

As part of the inspection, the Office found a number of violations, including violations of Article 14, paragraph 1 of Regulation (EU) 2016/679, as the inspected person did not provide evidence that, in connection with the database of real estate owners/co-owners, they informed the data subjects whose personal data were processed, about the conditions of this processing. Furthermore, the Office found a violation of Article 24, paragraph 1 of Regulation (EU) 2016/679, as the audited person did not submit documents documenting the fulfillment of measures pursuant to Article 25, paragraph 1 and Article 32, paragraph 1 of Regulation (EU) 2016/679, received in connection with the operation of this database and a violation of Article 30, paragraph 1 of Regulation (EU) 2016/679, as it did not submit records of processing activities by the time the control protocol was issued.

As part of the inspection protocol, in accordance with the provisions of § 10, paragraph 2 of Act No. 255/2012 Coll., inspection regulations, the inspected person was required to submit a written report on the elimination of deficiencies identified by the inspection, within 30 days from the date of the formal end of the inspection in pursuant to § 18 of Act No. 255/2012 Coll. The inspection was terminated by the futile expiration of the deadline for submitting objections. Following the findings, the Office will initiate administrative proceedings.

Article 5, paragraph 2 of the GDPR enshrines not only the administrator's responsibility for compliance with the obligations under the GDPR, but also regulates his responsibility to document compliance with this compliance. Therefore, the administrator cannot absolve himself of responsibility, for example, as the controlled person tried to do, by deleting the software in question and the personal data associated with it. The administrator is still responsible for proving the compliance of his personal data processing with the GDPR, failure to prove this compliance constitutes a violation of the GDPR and can be punished with a fine.

It should also be noted that the fulfillment of the information obligation, whether according to Article 13 or 14 of the GDPR, is a fundamental obligation of the personal data administrator. Only a properly informed data subject has the opportunity to make a qualified decision whether to entrust his personal data to the administrator or whether he will not exercise any of his rights, which he is entitled to according to the GDPR. If the data subject does not have a realistic idea of how his personal data is being processed, he is denied this option and, as a result, may in some cases even prevent the data subject's right to freely choose how his personal data can be handled. If the Office then comes to the conclusion that such an action took place on the part of the administrator because he tried to conceal from the data subjects how he handles personal data, this may be a similarly serious offense as, for example, the processing of personal data without a proper legal title according to Art. 6 paragraph 1 GDPR.

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