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OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-06702 / 17-37

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 2, § 29 and § 32 of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, and according to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided on 2 February 2018 pursuant to §

152 (6) (a) b) of Act No. 500/2004 Coll. thus:

Dismissal of the party to the proceedings, the company XXXXXX, against the decision of the Office for Personal Protection data ref. UOOU-06702 / 17-17 of 11 October 2017, is rejected and the contested decision is confirmed.

Justification

By order no. UOOU-09702 / 17-4 of 15 July 2017 sent to XXXXXX (hereinafter only "party to the proceedings"), proceedings on a misdemeanor pursuant to § 15 par. a) of the Act No. 255/2012 Coll., in connection with the failure to provide co-operation within the control conducted by the Office for the protection of personal data (hereinafter referred to as the "Office") at the party to the proceedings. The participant filed against the order proceedings resistance and the administrative body continued the proceedings.

As part of the inspection taking place at the party to the proceedings, the inspecting inspector requested synergy of answers to 5 specific questions. The party's response was a request to send basic identifiers of the complainant.

On 18 August 2017, the administrative body informed the party to the fact that they were

gathered documents for the issuance of the decision and instructed him about his rights under the law

No. 500/2004 Coll.

On 8 September 2017, the Office received a request from a party to the proceedings for a written communication from the beneficiaries

officials in the given proceedings and at the same time an application pursuant to Section 80, Paragraph 2 of Act No. 250/2016 Coll.

on ordering an oral hearing and giving access to the file. The administrative body answered the question concerning the entitled persons by a letter dated 14 September 2017 and at the same time invited the party to the proceedings to supplement the request for an oral hearing.

On 27 September 2017, the party to the proceedings inspected the file and at the same time the supplement was delivered to the Office

requests for an oral hearing. Resolution no. UOOU-06702 / 17-16 of 9 October 2017 Office rejected the request for an oral hearing.

Subsequently, on 11 October 2017, the administrative body issued a decision no. UOOU-06702 / 17-17 laying participant in the proceedings for committing an offense pursuant to § 15 par. 1 let. a) of Act No. 255/2012 Coll. saved according to § 35 letter b) of Act No. 250/2016 Coll. and in accordance with § 15 paragraph 2 of Act No. 255/2012 Coll. a fine of CZK 50,000 and further pursuant to Section 95, Paragraph 1 of Act No. 250/2016 Coll. obligation to replace costs of CZK 1,000. The party committed the offense by taking the ongoing did not provide the inspector with the necessary cooperation, as he did not send the required ones answers to the questions set out in the letter of 12 June 2017, in breach of the obligation provided for in Section 10, Paragraph 2 of Act No. 255/2012 Coll., ie to create conditions for the performance of inspections, enable the inspector to exercise his rights stipulated by law and provide for that necessary cooperation.

The decision was delivered to the party on 21 October 2017 and on 3 November 2017

an appeal was submitted to the Office via the data box, which was subsequently supplemented by notes of the party received by the Office on 19 and 28 November 2017.

In the appeal delivered to the Office on 3 November 2017, the party to the proceedings refers to the reply the Director of the Public Relations Department of the Office that the Office has not yet carried out an inspection of the matter matching payments existence and providing services without a complaint, control holding arrangements and tax control.

In the justification of its appeal delivered to the Office on 19 November 2017, the participant considers proceedings of a question posed by the Office as illegal and in conflict with Act No. 101/2000 Coll. Objectes that the Office itself gave rise to a negative opinion of the party to the proceedings on the invitation to cooperate, whereas, following an inquiry, he was informed that the Office was not carrying out checks related to the issues, about which the party to the proceedings is in dispute with the Office. It further finds an infringement in the fact that The Office repeatedly refused to provide him with the personal data of the so-called complainant, which he considers fundamental restrictions on their rights. According to the party to the proceedings, the Office is proceeding in conflict with the business

and the Civil Code, in case of non-provision of services, the party to the proceedings refers to the law defined procedure, namely the submission of a complaint. At the same time, he objects to the bias of the Office, which sees in the decision-making of the Office before the objections of the inspector's bias are settled, and thus anticipates his future decisions without knowing the complainant's arguments. Office completely ignores Act No. 101/2000 Coll. and the interpretation of this Act defined by the State. Last but not least in many cases, he objects to the political abuse of power, as Inspector Vacula and his superiors are politically connected with parties who have been the subject of proceedings by a party to a number of criminal cases and investigations, many of which are

currently running. In the end, the party to the proceedings also challenges the amount of the set sanction, which is according to him, inadequate to the amount of the registered capital of the party to the proceedings and liquidation for him.

In the supplement to the appeal delivered on 28 November 2017, the party to the proceedings again comments to the bias of the inspector, states that Act No. 255/2012 Coll., on inspection, cannot be overridden Act No. 101/2000 Coll. He further argues that it is not possible to enter into consumer disputes at on the basis of an anonymously announced notice, which is then anonymised by Inspector Vacula

before checking under initials and under penalty to demand business information

unrelated to Act No. 101/2000 Coll. Finally, the party reiterates its protest against

2/4

based on the fact that the Office has not carried out any other such inspection and is protesting such a procedure.

The appellate body examined the contested decision in its entirety, including the process which preceded its publication, and reached the following conclusions.

The appellate body generally states that this is mostly an argument

based on the inspector's alleged misconduct for political reasons. The party to the proceedings

however, it again does not mention any specific breaches and extends the bias to the management of the Office for reasons affiliation to the political parties against which the dispute is taking place, without, however, specifying a specific case such a dispute.

With regard to the inspection in the present case, the Appellate Body states that each case is individual and impossible therefore, on the basis of the fact that a similar case has not yet been resolved by the Office

exceeding the powers of both the inspector and the Office itself. Control and subsequent administrative

the proceedings were conducted in accordance with the applicable legal regulations and no violations were found. Launch

The inspection was initiated by a complaint from a specific person who stated that he had paid the party to the proceedings

the amount of CZK 300 for the issued invoice No. 268417 dated February 14, 2017, however, executed

the payment was not confirmed to him and the complainant also did not receive an extract from the debtors' register for which he asked. The complainant complained about the leakage of his personal data from the CERD system and expressed his fear of possible misuse of personal data provided by him.

Objection against Act No. 255/2012 Coll. cannot be accepted, as this law stipulates in § 9

the inspector's obligation to ascertain the state of affairs to the extent necessary to achieve the purpose of the inspection

and, depending on the nature of the inspection, substantiate the inspection findings with the necessary documentation. Method

the inspector was in full compliance with this law, as they require the cooperation of the inspected

person is according to § 8 of the same law the right of the controller.

As regards the argument concerning the non - disclosure of the complainant 's name, the Appellate Body states that to the provisions of Section 22 of Act No. 255/2012 Coll., according to which they are also in the case of inspection of the file those parts of the file from which the person who initiated the inspection can be identified are excluded, the inspector acted correctly when the party refused to identify the complainant.

Thus, the appellate body does not find any violation of the legislation by the inspecting inspector.

Nor can a party 's argument concerning the Office' s decisions be accepted before

objections of bias are settled

inspector and the Office in anticipating future ones

decision without the Office knowing the applicant's arguments. Appellate body in this matter

draws attention to the fact that the party challenging the bias of the inspecting each

a decision or resolution issued in the course of the inspection. He subsequently expanded the alleged bias

also to the Office, mainly for political reasons, which, however, it does not specify. Allegedly

bias, the party challenges almost every decision of the inspector himself, while in

does not state any specific legal grounds for bias in its submissions.

The amount of the sanction imposed may be duly justified and taken into account

to the small range of answers required, but on the other hand to the seriousness

their

non-response in terms of finding out the actual situation in the framework of proper and lawful performance

controls.

3/4

For the reasons set out above, the appellate body puts forward the party 's arguments concerning

alleged breach of law or misuse of powers by the Office, expressed

in the appeal, rejected it and, after an overall examination, did not find the contested order

illegal and did not find any errors in the procedure prior to the issuance of this

resolution. Therefore, the appellate body ruled as stated in the operative part of this decision

Lessons learned:

Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged

No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, February 2, 2018

official stamp imprint

JUDr. Ivana Janů

chairwoman

4/4