



**THE PRESIDENT
OF THE PERSONAL DATA
PROTECTION OFFICE**

Jan Nowak

Warsaw, 24.11.2022

DS.523.1676.2021.ZS.WU

DECISION

Pursuant to Article 105(1) of the Act of 14 June 1960 Code of Administrative Procedure (consolidated text: Journal of Laws Of Laws 2022, item 2000), Article 7(1) and 7(2) of the Act of 10 May 2018 on the personal data protection (Journal Of Laws 2019, item 1781) and Article 60(8) of Regulation (EU) 2016/679 of the European Parliament and of the Council 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 (OJ Office EU L 119, 04.05.2016, p. 1, OJ Office EU L 127, 23.5.2018, p. 2 and OJ Office EU L 74, 04.03.2021, p. 35), following the administrative procedure concerning Ms ██████████ residing in Poland, ██████████ concerning irregularities in the processing of her personal data by ██████████, ██████████, with its registered office ██████████ Luxembourg, consisting of the processing of an e-mail address after the closure of the ██████████, the President of the Personal Data Protection Office

decides to discontinue the proceedings.

Justification

The Personal Data Protection Office (hereinafter: UODO) received a complaint from ██████████ residing in Poland, ██████████, on irregularities in the processing of her personal data by ██████████ with its registered office ██████████ Luxembourg (hereinafter: the Company), processing the email address after the closure of the ██████████ account.

In the course of the administrative procedure, the President of the UODO established the following facts:

1. The Complainant stated that she had closed her ██████████ user account. Following the closure of the account, she received emails concerning the changes of the Terms and Conditions. The Complainant did not request the Company to erase her email address, since, in her view,

438847.1). The President of the UODO agreed with the draft decision in the case (evidence: A60DD Reasoned Objections Report 438847.1).

After examining all the evidence gathered in the case, the President of the UODO considered the following.

Article 60 of the GDPR regulates the cooperation between the lead supervisory authority and the other supervisory authorities concerned. In accordance with Article 60(1) GDPR, the lead supervisory authority cooperate with the other supervisory authorities concerned. The lead supervisory authority and the supervisory authorities concerned exchange all relevant information with each other. According to Article 60(7) GDPR, the lead supervisory authority shall adopt and notify the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the other supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds. The supervisory authority with which a complaint has been lodged shall inform the complainant on the decision. Art. 60(8) GDPR provides that, by derogation from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.

In the light of the above, the CNPD, acting as the lead supervisory authority in the case, adopted a draft decision in which it discontinued the proceedings and acting on the basis of Article 60(8) GDPR, sent it to the President of the UODO, as the authority with which the complaint was lodged. Consequently, the President of the UODO adopts a decision in this case.

The President of the UODO, acting on the basis of the Code of Administrative Procedure (Journal of Laws Of Laws 2022, item 2000), hereafter: the KPA assesses, on the basis of all the evidence gathered, whether a given circumstance has been proved. Evidence in proceedings may include, in particular, documents, witness statements, expert opinions and visual inspection (Article 75(1) of the KPA). A public administration body may consider the facts of the case to be determined only on the basis of clear evidence and cannot confine itself to establishing a prima facie case unless otherwise provided for in the KPA.

In the present case, the Complainant indicated that she had a [REDACTED] account, which she decided to close, but despite the closure of the account, she received emails concerning changes of the terms of the service. The Complainant also stated that she had attempted to intervene directly with the Company, but in her view, contact with the service was possible only after logging in to the account.

The CNPD, acting in its capacity as the lead supervisory authority in the case, asked the Complainant to provide an e-mail address linked to the closed account, to forward a copy of all correspondence between the Complainant and the Company and a copy of the emails received after the closure of the [REDACTED] account. The CNPD found that the Complainant's claims that it was not possible to contact the Company if she did not have a user account were not correct, since it was possible to contact the Company using the online form available after selecting the button 'I cannot log in or I have no account'.

The President of the UODO sent a request for additional information and findings from the CNPD to the Complainant on 27.08.2021, the letter was effectively delivered to the Complainant on 06.09.2021. The Complainant did not reply to it.

The Polish Supreme Administrative Court in its judgment of 26.10.1984 (ref.: II SA 1205/84, ONSA 1984, No 2, item (98) ruled that: 'It follows from Articles 7 and 77(1) of the Code of Administrative Procedure that the authority conducting the administrative proceedings is required to examine and consider all the evidence gathered exhaustively. This does not mean that a party is exempted from complicity in the implementation of that obligation, especially since failure to prove a particular fact may lead to adverse results for the party.' The Supreme Administrative Court reiterated this position in its judgment of 12.07.2017, ref. II GSK 2757/15, adding that (quote): 'Nor can it be inferred from those provisions that the administrative authorities are required to seek evidence in support of a party's assertions where that party does not itself take the initiative of providing any evidence. In the event of a party's inaction, the authority cannot be expected to prove facts intended to militate against its findings.'

In the present case, the Complainant did not indicate to which e-mail address she received the new messages, nor did she provide any evidence of receipt of such messages or any correspondence with [REDACTED]. At the same time, the lead supervisory authority found that the Complainant's claims that it was not possible to contact the Company in the absence of a user account were not correct, since it is possible to contact the Company using the online form available after selecting the button 'I cannot log in or I have no account'.

In the light of the above, it must be concluded that the investigation carried out did not provide evidence that the Complainant's personal data had been processed in the form of her e-mail address following the deletion of the user's account in [REDACTED]. In addition, no clear evidence was obtained during the proceedings that the Complainant was unable to contact the Company in the absence of a user account.

In accordance with Article 105(1) of the KPA, where proceedings have become devoid of purpose for any reason, the administrative authority shall issue a decision to discontinue the proceedings. The determination by a public authority of the existence of the condition referred to in Article 105(1) of the KPA obliges it, as it is pointed out in doctrine and jurisprudence, to discontinue proceedings, since there are no grounds for issuing a decision on the substance of the case where that condition exists, and the continuation of the proceedings in such a case would amount to a flaw in that case, which would have a significant impact on the outcome of the case.

According to the evidence gathered in the case, there is no proof to support the Complainant's allegations, so that it cannot be considered that the processing of the personal data had taken place, with the result that those proceedings had become devoid of purpose.

In this factual and legal situation, the President of the Personal Data Protection Office decided as set out in the operative part of this decision.

Under the authority of the President
of the Personal Data Protection Office
Director of the Complaints Department



The decision shall be final. Pursuant to Article 7(a) 2 of the Personal Data Protection Act of 10 May 2018 (Journal Of Laws 2019, item 1781) in conjunction with Articles 13(2), 53(1) and 54 of the Proceedings before Administrative Courts Act of 30 August 2002 (Journal of Laws Of Laws 2022, item 329 as amended), a party who is dissatisfied with this decision has the right to lodge a complaint with the Provincial Administrative Court in Warsaw within 30 days of being served on the party. The complaint is lodged via the President of the Personal Data Protection Office (address: Personal Data Protection Office, ul. Stawki 2, 00-193 Warsaw). The entry for the complaint is PLN 200. A party has the right to apply for exemption from court costs or for the right to aid.