

**PRESIDENT
OFFICE OF PROTECTION
PERSONAL DATA**

Miroslaw Wróblewski

Warsaw, 17 March 2025

DS.523.5010.2020.ZS.AS.

DECISION

Pursuant to Article 104(1) of the Code of Administrative Procedure of 14 June 1960 (Journal of Laws 2024, item 572), Article 7(1) of the Act of 10 May 2018 on the protection of personal data (Journal of Laws 2019, item 1781), 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 (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, OJ L 127, 23.05.2018, p. 2 and OJ L 74, 4.03.2021, p. 35) on the complaint of [REDACTED] (residing: [REDACTED]) concerning non-fulfilment of the request to erase personal data by [REDACTED] (registered office: [REDACTED])
[REDACTED] President of the Personal Data Protection Office

rejects the request.

EXPLANATORY STATEMENT

The Personal Data Protection Office, hereinafter referred to as the Office, received a complaint from [REDACTED] (residing: [REDACTED]), hereinafter referred to as the Complainant, concerning irregularities in the processing of his personal data by [REDACTED] (registered office: [REDACTED]), hereinafter referred to as the Company, consisting in failure to comply with his request to delete data.

The President of the Office identified the case as having a cross-border character in accordance with Article 4(23) 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 (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, OJ L 127, 23.05.2018, p. 2 and OJ L 74, 4.03.2021, p. 35), hereinafter referred to as the GDPR, and referred the matter to the Dutch supervisory authority (Dutch: *Autoriteit Persoonsgegevens*), hereinafter referred to as: APG, which accepted the case as lead supervisory authority.

Following the investigation of the complaint, the APG informed the President of the Office of its findings and presented a proposal to resolve the case by closing it. The President of the Office agreed with the factual findings made by APG.

During the administrative proceedings, the President of the Office established the following facts:

1. On 24 September 2020, the Complainant requested the Company to delete the account and personal data in the field of name, surname, image, e-mail address and facts concerning his person. The Company did not respond to the Complainant's request, who still received numerous e-mails (evidence: Complainant's letter of 1 October 2020)
2. On 9 November 2020, 20 November 2020 and 22 November 2021, APG sent requests for information to the Company, at the same time communicating the content of the Complainant's complaint. The Company replied to the APG's requests by letters of 11 November 2020, 1 December 2020 and 3 December 2021 (evidence: APG findings of 25 March 2022)
3. In accordance with APG's findings, the Company's support office uses an online notification system to delete personal data. With regard to data subjects who have a user account, there is a procedure in place whereby, after sending a request for deletion of data, the Company checks the identity of users by sending an e-mail. At the same time, the Company checks whether the person making such a request still has to settle certain accounts. Once the Company determines that there are no further legal impediments, it will immediately delete all personal data in accordance with the provisions of the GDPR (evidence: APG findings of 25 March 2020)
4. The APG established that the Company received a request to delete the Complainant's data on 26 September 2020. The Company explained that it sent an email to the Complainant on 25 October 2020, in which it informed that the Complainant's request would be dealt with late. The reason for the delay was the lack of staff due to COVID-19. In the e-mail, the Company referred to the content of Art. 3 GDPR (evidence: APG findings of 25 March 2022)
5. By letter to the APG dated 1 December 2020, the Company confirmed that all personal data related to the e-mail address [REDACTED] had been deleted. The company provided APG with screenshots of its database, which illustrate that the personal data had been completely deleted. The Company also sent an email to the Complainant confirming that all data had been deleted. APG was unable to determine when this email was sent to the Complainant accurately, as all data regarding the deletion request (and the Company's response) are deleted one year after the deletion (evidence: APG findings of 25 March 2022)
6. The APG found that the submission of the complaint was premature, as the request for erasure took place on 26 September 2020, while the complaint was submitted on 1 October 2020. According to the APG's findings, the controller is not obliged to respond to the complaint immediately. The Company shall respond to the requests of the data subject without undue delay and in any event within one month of receipt of the request. Only in the absence of action by the

controller or refusal to implement it in part or in whole, the data subject may lodge a complaint in connection with a violation of Article 17 in conjunction with Article 12(3) GDPR (evidence: APG findings of 25 March 2022)

7. The APG established that the Company informed the Complainant within one month, i.e. On 25 October 2020, after receiving an email on 26 September 2020, that his request would be dealt with some delay, referring to the lack of staff due to COVID-19. According to the APG, the staff restrictions caused by the COVID-19 pandemic constitute a sufficient justification for extending the time limit for taking action in response to the Complainant's request. By informing the Complainant within one month, the Company acted in accordance with Art. 3 of the GDPR. Within two months of this email, i.e. On 1 December 2020, all personal data of the Complainant were deleted (evidence: APG findings of 25 March 2022)
8. On the basis of its findings, the APG considers that the matter has been dealt with to an appropriate extent and rejects the complaint under Article 60(8) of the GDPR. In accordance with Article 60(8) GDPR the President of the Office, as the supervisory authority with which the complaint has been lodged, adopts the decision and notifies it to the complainant and informs the controller thereof. (evidence: APG findings of 25 March 2022)

After examining all the evidence gathered in the case, the President of the Personal Data Protection Office weighed the following.

In accordance with Article 12(3) GDPR, the controller shall, without undue delay and in any event within one month of receipt of the request, provide the data subject with information on the action taken on the request pursuant to Articles 15 to 22 of the GDPR. If necessary, that period may be extended by a further two months due to the complexity of the request or the number of requests. Within one month of receipt of the request, the controller shall inform the data subject of such extension, stating the reasons for the delay.

Therefore, when making a request to the controller (in this case, a request to delete personal data), the data subject should take into account that the deletion of data is not always an action that can be performed immediately. In addition, the provisions of the GDPR regulate the time limits within which the controller is obliged to comply with its obligations.

The exercise by the data subject of the legal remedies provided for in Article 77 of the GDPR, i.e. the right to lodge a complaint with a supervisory authority in the event that he or she finds that there may have been a breach of the provisions of the Regulation on the protection of personal data in connection with the failure to exercise his or her right specified in Chapter III of the GDPR, e.g. a request resulting from the provisions of Article 17 of the GDPR to delete the personal data of the data subject, may take place only if the controller fails to comply with the deadline or refuses to comply with this request.

It must therefore be concluded that, in the present case, the Complainant's claim is premature. According to the complaint, the Complainant requested the Company to

delete the data on 26 September 2020, while the Complainant's complaint was received by the President of the Personal Data Protection Office on 1 October 2020, i.e. before the deadline for the Company to reply.

As is apparent from the evidence gathered in the present case, the Company replied to the Complainant on 25 October 2020. As part of its reply, the Company informed the Complainant that its request would be dealt with a certain delay, referring to the lack of staff due to COVID-19. The Company deleted the Complainant's personal data on 1 December 2020 and informed the Complainant thereof.

It should be noted that the above actions of the Company do not violate the provisions of Article 12(3) of the GDPR. Within one month of receiving the request, the Company informed the Complainant about the extension of the deadline for providing the Complainant with information on the actions taken in connection with the request for deletion of data, together with the reasons for the delay. In addition, within 2 months of the expiry of the month to reply, i.e. On 1 December 2020, the Company deleted the Complainant's personal data and informed him of this fact. In the opinion of the President of the Personal Data Protection Office, the reasons presented by the Company for the delay in providing the Complainant with information in response to the request for deletion, namely the lack of staff related to the COVID-19 pandemic, deserve to be taken into account and constitute a justified reason for the delay in providing the above-mentioned information on the actions taken.

It should be noted here that the administrative proceedings conducted by the President of the Personal Data Protection Office serve to control the compliance of data processing with the provisions on the protection of personal data and are aimed at issuing an administrative decision restoring the lawful state pursuant to Article 58(2) of the GDPR. The assessment carried out by the President of the Office in each case serves to examine the justification for issuing an order to a specific entity corresponding to the instruction of Article 58(2) GDPR to restore the lawful state in the processing of data – it is therefore justified and necessary only in so far as irregularities in the processing of personal data exist. In the opinion of the President of the Personal Data Protection Office, there are no grounds to conclude that such irregularities exist in the present case, since the Complainant's complaint concerns an unexercised right in a situation where the controller did not delay in replying or inaction and the time limit for taking action had not expired. In addition, as is apparent from the evidence gathered, the Company complied with the Complainant's request by acting in accordance with the provisions of Article 12(3) of the GDPR.

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

Under the authority of the President
of the Personal Data Protection Office
Head of the Cross-border Proceedings Unit
International Cooperation Department

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The decision is final. On the basis of Article 7(2) of the Act of 10 May 2018 on the protection of personal data (Journal of Laws 2019, item 1781) and in conjunction with Articles 13(2), 53(1) and 54 of the Proceedings before Administrative Courts Act of 30 August 2002 (Journal of Laws 2024, item 935, as amended), the party has the right to lodge a complaint with the Voivodship Administrative Court in Warsaw, within 30 days from the date of notification of this decision, via the President of the Personal Data Protection Office (address: Personal Data Protection Office, ul. Stawki 2, 00 – 193 Warsaw). The fee for the complaint is 200 PLN. The party has the right to apply for the right to assistance.

The decision is final. On the basis of Art. 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 926, as amended). Journal of Laws 2019, item 1781) and in conjunction with Articles 13(2), 53(1) and 54 of the Proceedings before Administrative Courts Act of 30 August 2002 (Journal of Laws 2002, No. Journal of Laws 2024, item 935, as amended)., the party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw, within 30 days from the date of notification of this decision, via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Rates 2, 00 – 193 Warsaw). The entry from the complaint is 200 zlotys. The party has the right to apply for the right to assistance.