

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 22

October

2018

DECISION

ZSPU.440.379.2018 (2)

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), hereinafter: Kpa, in connection with joke. 5 sec. 1 lit. c, art. 6 (1) (a) c) and e) and art. 57 sec. 1 lit. a) and f) 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 regulation on data protection) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended [I], hereinafter referred to as the GDPR, after conducting administrative proceedings regarding a complaint from Mrs. DO, Zam. in G. and Mr. BO, residing in G. for the processing of their personal data in the scope of PESEL numbers by the Poviast Building Supervision Inspector in B., President of the Office for Personal Data Protection refuses to accept the request.

Justification

The President of the Personal Data Protection Office received a complaint from Ms D. O., residing in in G., hereinafter referred to as the Applicant and Mr B. O., domiciled in G., hereinafter referred to as the Complainant for the processing of their personal data by the Poviast Building Supervision Inspector in B., hereinafter referred to as PINB. As indicated in the complaint, quotation: "I inform you that on [...] 04.2018 the protection of personal data was breached, i.e. disclosure of the PESEL number without our consent by PINB in B. (...). We were obliged to present the identity cards from which Inspector K. wrote down our personal data. Then, in April, these data were disclosed in a letter (administrative decision - PUODO) of [...] 04.2018, and this letter was sent to 7 people (...). I would like to explain that we have not been informed about the method of processing these data and we have not consented to their disclosure ”.

In the course of the explanatory proceedings, the President of the Personal Data Protection Office established the following facts:

PINB conducted administrative proceedings concerning the legality of the extension of an additional part of the building and the execution of a window opening in a farm building on a plot of land registration number [...] in W. (case reference number PINB. [...]).

The PESEL numbers of the Complainant and the Complainant were obtained by PINB during the administrative proceedings, ie: "from Ms D.O. and during the hearing on

i. [...] 03.2018 at PINB's headquarters in B. from the presented ID card

ii. (only a record of the hearing was prepared, with only the name and surname and PESEL number), while "from Mr. B. O. during the hearing

iii. on [...] 03.2018 at the seat of PINB in B. from the presented ID card (only the protocol from the hearing, which includes only the name and surname and PESEL number) and from the ID card during the inspection on [...] 05.2017 on the plot register [...] in W. (only the record of the hearing was prepared, with only the first name and surname and PESEL number).

The administrative procedure was completed with the issuance of an administrative decision of [...] April 2018, case reference number PINB. [...], in which PINB "orders you to DO (PESEL [...]) and Mr BO (PESEL [...]) to demolish a porch with dimensions of 2.95m x 2.85m and a height of 4.0m located on the plot with registration no. [...] From the side of the plot with registration no. [...] In the town of W. ”.

i. PINB in a letter of [...] September 2018 addressed to the President of the Personal Data Protection Office (UODO) expressed the opinion of the authority that PESEL numbers included in the PINB decision [...] of [...] April 2018 were included pursuant to Art. 107 § 1 of the Code of Administrative Procedure (the decision includes, inter alia, the designation of the party or parties) and in connection with the special provision of Art. 3 § 1 of the Act of 17 June 1966 on administrative proceedings in administration (Journal of Laws of 2018, item 1314, as amended). Pursuant to Art. 27 § 1 point 2 of the Act on administrative proceedings in administration, the writ of execution shall indicate the name and surname or company of the obligated person and his address, as well as the tax identification number or PESEL number, if the obligated has such a number.

PINB's decision of [...] April 2018 was based on Art. 109 § 1 of the Code of Administrative Procedure, served

i. parties to administrative proceedings (of which the decision was withdrawn by 5 parties

ii. proceedings) and pursuant to Art. 84 sec. 2 point 1 of the Act of 7 July 1944 - Construction Law (Journal of Laws of 2018, item 1202, as amended) - to the architectural and construction administration authority.

In additional clarifications of [...] October 2018, PINB indicated the need to issue an enforceable title (due to the default under the decision of [...] April 2018) as of [...] October 2018.

The President of the Personal Data Protection Office considered the following.

The subject of these administrative proceedings is the disclosure of the PESEL numbers of the Complainants in the administrative decision of [...] April 2018 issued by the Poviát Building Supervision Inspector in B.

It should be emphasized that pursuant to the applicable provisions, the processing of personal data is lawful when the controller has at least one of the provisions set out in Art. 6 sec. 1 GDPR of the material conditions for the processing of personal data in accordance with the law. Pursuant to the wording of Art. 6 sec. 1 GDPR, the processing of personal data is lawful only if one of the following conditions is met: a) the data subject has consented to the processing of his personal data for one or more specific purposes; b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; d) processing is necessary to protect the vital interests of the data subject or of another natural person; e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular when the data subject is a child.

In connection with joke. 6 sec. 1 lit. c) it should be pointed out that pursuant to Art. 80 sec. 2 point 1 of the Construction Law, construction supervision tasks are performed, subject to par. 3 and 4, the following authorities: the district construction supervision inspector. However, according to Art. 81 sec. 1 point 2 of the Construction Law, the basic obligations of the architectural and construction administration and construction supervision authorities include issuing administrative decisions in matters specified in the Act. Pursuant to Art. 49 b paragraph. 1 of the Construction Law, "the construction supervision authority orders, subject to par. 2, by way of a decision, demolition of a building object or part thereof, under construction or built without the required notification or despite an objection raised by the architectural and construction administration authority. The above provisions constitute a premise legalizing the data processing process in the scope of issuing an administrative decision by PINB, in accordance with Art. 6 sec. 1 lit. c) and f) GDPR.

In connection with joke. 6 sec. 1 lit. c) and e) it should be indicated that pursuant to Art. 107 § 1 of the Code of Administrative

Procedure, an obligatory element of an administrative decision is, inter alia, designation of the party or parties to the proceedings (point 3). With the above-mentioned the provision does not indicate that the mandatory element of designating the page was to provide the PESEL number. In administrative proceedings, the name, surname and address constitute the data identifying a natural person. Other data may be provided only when it results directly from a legal provision, e.g. art. 126 § 2 point 2 of the Act of November 17, 1964 - Code of Civil Procedure (Journal of Laws of 2018, item 1025, as amended). Additionally, it should be noted that the designation of the party or parties to the proceedings should comply with the principle of minimization provided for in Art. 5 sec. 1 lit. c) GDPR, according to which personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed, and the administrator - in this case PINB - is responsible for compliance with the above-mentioned provision and must be able to demonstrate compliance with it, in line with the accountability principle (paragraph 2). This principle introduces a quantitative limitation on the collection and further processing of personal data, according to which the data must be adequate and appropriate to achieve the purpose of their collection, but at the same time must not be excessive in relation to the intended purpose. Thus, the processing of unnecessary data means a breach of the provisions on the protection of personal data. For this reason, the processing of data that may potentially be useful in the future is not allowed.

Therefore, there are no grounds for the pages to be marked with a PESEL number. The designation of the party or parties in the administrative decision should contain only the data necessary to fulfill the obligation under Art. 107 § 1 of the Code of Administrative Procedure, i.e. to achieve the goal of issuing an administrative decision. The designation of a party for the purpose of issuing an administrative decision with the PESEL number is pointless, unnecessary for the implementation of the original purpose of processing, it does not justify providing data other than the name, surname and place of residence.

Only non-performance of the obligation resulting from the administrative decision begins the new procedure, in accordance with the provisions on administrative enforcement in administration. According to Art. 27 § 1 point 2 of the Act on enforcement proceedings in administration (Journal of Laws of 2018, item 1314, as amended), the writ of execution should include, inter alia, indication of the name, surname or company of the obligated person and his address, as well as NIP or PESEL number, if the obligated person has such a number. This provision is a premise legalizing the processing of personal data in relation to the data contained in the issued enforcement title, which is in accordance with the above. the principle of minimization. Above the provision explicitly indicates what elements must be contained in the enforcement title. Only the failure to fulfill the

obligation imposed by the administrative decision of [...] April 2018 issued by PINB resulted in the need to issue an enforceable title on [...] October 2018.

In relation to the above, it should be noted that in the administrative decision issued by PINB of [...] April 2018, the indication of the PESEL numbers of the complainant and the complainant was incorrect with regard to the manner of marking the parties pursuant to Art. 107 § 1 of the Code of Administrative Procedure. Providing PESEL numbers in an administrative decision is not justified by the provisions of applicable law, and therefore constitutes excessive processing of personal data. It is also inconsistent with the principle of minimization set out in Art. 5 sec. 1 lit. c) GDPR. It is undisputed that the situation which was the subject of the complaint was irreversible and the administrative decision in question containing these data was sent to 7 parties to the proceedings, of which 5 parties to the proceedings received the decision. Therefore, the supervisory body cannot interfere with the content of the administrative decision issued by PINB, and thus - despite the violation found - it cannot order the removal of the PESEL numbers of the Complainant and the Complainant from the decision due to the lack of competence and competence of the President of the Personal Data Protection Office in this regard. However, in view of the above, the President of the Personal Data Protection Office asked the Poviast Building Supervision Inspector in B. to take appropriate actions to eliminate the identified irregularities in the future.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

The decision is final. Based on Article. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000 and item 1669) in connection with Art. 13 § 2, art. 53 § 1 and article. 54 § 1 of the Act of August 30, 2002 - Law on proceedings before administrative courts (Journal of Laws of 2018, item 1302, as amended), from this decision, the party has the right to lodge a complaint against the decision with the Voivodship Administrative Court in Warsaw, within 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Personal Data Protection Office. The entry fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

[I] The amendment to the aforementioned regulation was announced in the Journal Of UE L 127 of 23/05/2018, p. 2

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