

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 21

March

2019

DECISION

ZSOŚS.440.96.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 12 point 2, art. 22, art. 23 sec. 1 point 2 and point 5 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) in connection with Art. 100 sec. 1 and 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), following administrative proceedings regarding the complaint of Mr. AW to disclose personal data collected in the course of investigation conducted by the Municipal Police Commander in B., unauthorized persons,

I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. A. W., hereinafter referred to as "the Complainant", about disclosure of his personal data by officers of the City Police Headquarters in B. in connection with the performance of official activities, to unauthorized persons.

It should be noted here that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data, i.e. May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. According to Art. 100 sec. 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime, proceedings conducted by the President of the Office for Personal Data Protection, initiated and not completed before the date of entry into force of this Act (i.e. before February 6, 2019.) are conducted by the President of the Personal Data Protection Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Code of Administrative Procedure (hereinafter: the Code of Administrative Procedure).

Therefore, all activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In the course of the proceedings initiated by the complaint, the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

In a letter of [...] July 2016, the complainant reported to the local Office that as a result of breach of professional secrecy by officers of the Municipal Police Headquarters, his personal data and sensitive data, which had been disclosed to third parties, had been breached. The applicant indicated that he had learned that officers of the Municipal Police Headquarters in B. were disseminating information about the applicant's attempted suicide, which took place on the night of [...] to [...] June 2016. He emphasized that the data which officers they convey this name and surname of the applicant and a description of his suicide attempt.

By letters of [...] January 2017, the Inspector General for Personal Data Protection informed the Complainant and the Commander of the City of Police in B. about the initiation of proceedings in the case and asked the Commander of the City of Police in B. to comment on the content of the complaint and provide written explanations. by enclosing a copy of the complaint. In the explanations submitted to the Inspector General for Personal Data Protection, the Municipal Police Commander in B., responding to the content of the complaint by Mr. A. W., indicated that [...] on June 2016, on the railway viaduct in B. Mr. A. W. tried to commit suicide. He explained that after the arrival of the Police patrol, the officers found the applicant's cohabitant and a random man who was driving past the scene of the incident. The police officers documented the course of activities and the most important findings in official notebooks and an official note, and the prosecutor on duty was informed about the whole incident. The Commandant emphasized that on the same night, after finding out the applicant's place of residence, the policemen went to the following address: [...], where they found Mr. A. W.'s grandmother and aunt. He said that the people found had been informed about the incident by officers of the Municipal Police Headquarters in B. In the further part of the explanations, the Commandant argued that the findings did not confirm that the police had disclosed personal data or informed unauthorized persons about the event. He emphasized that sources of possible information outflow about the event from the night [...] to [...] June 2016 can be found in many places and from various people, including his relatives. The commander also noticed that at the place of the attempted suicide, before the policemen's arrival, there were also outsiders who had learned

about the incident and its course. He indicated that after questioning, all the policemen who were involved in the case of Mr. A. W. denied that they had provided information about the incident to unauthorized persons. On the occasion of the above explanations, the Municipal Police Commander in B. attached the following documents: official notes of [...] June 2016 prepared by the former post. M. P. and detective M. P., official memo of [...] June 2016, drawn up by Major Sgt. Ł. B., protocol of the oral notification of the crime and the interrogation of the notifying person as a witness of [...] July 2016, the decision to initiate the investigation of [...] July 2016, letter from EW to the Police Station in B., decision to discontinue the investigation of [...] July 2016, official notes of [...] January 2017 prepared by asp. pc. B. D. and the service memo of [...] January 2016 prepared by the subinsp. J. H. The above-mentioned documents indicate the circumstances which the Commander refers to in the explanations.

By letter of [...] March 2018, the complainant was informed that the evidence in the case was sufficient to issue an administrative decision and was instructed to comment on the collected evidence and materials as well as requests submitted within 7 days from the date of delivery of the letter. This letter was delivered to the Complainant [...] in March 2018, however, until the date of this decision, he did not respond to the position of the Municipal Police Commander in B.

In these facts, the President of the Personal Data Protection Office considered the following.

In the present case, the Complainant complained about the unauthorized disclosure of personal data, including sensitive data, by officers of the Municipal Police Headquarters in B. in connection with the intervention undertaken at night from [...] to [...] June 2016.

First of all, it should be emphasized that the Act on the Protection of Personal Data of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Act", creates legal grounds for applying state protection in situations of unlawful processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, assessing the status of the case and subsuming, determines whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in art. 23 sec. 1 above of the Act on the Protection of Personal Data and depending on the findings in the matter, either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuance of an order to remedy deficiencies in the processing of personal data takes place when the

personal data protection authority states that there has been a violation of legal norms in the field of personal data processing. Pursuant to Art. 1 of the aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, in the sense referred to in Art. 7 point 2 of the cited act, it is admissible only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time. Personal data is any information relating to an identified or identifiable natural person (Article 6 (1) of the Act). Pursuant to Art. 3 sec. 1 above of the act, it is applied, inter alia, to state authorities. For this reason, it is obliged, inter alia, to comply with its provisions Police. At the same time, the principle of legality should be in sight (Article 26 (1) (1) of the Act), according to which the data controller processing the data should exercise special care to protect the interests of the data subjects, and in particular is obliged to ensure that such data were processed in accordance with the law. In addition, the administrator of personal data should process them for specified lawful purposes and not subject them to further processing inconsistent with these purposes (Article 26 (1) (2) of the Act). In the opinion of the President of the Personal Data Protection Office, in the discussed case, the above-mentioned conditions have been met.

In the realities of the case, the purpose of considering it was first of all whether the Municipal Police Commander in B. was entitled to process personal data without the consent of the person concerned, if they were necessary to conduct the investigation. Moreover, it had to be determined whether the data was disclosed to unauthorized persons.

The conducted analysis of the collected evidence proves that the Complainant's personal data were processed only in connection with the ongoing investigation. It should be noted that the initiation of the investigation was justified due to the circumstances of the incident during the night of [...] on [...] June 2016, i.e. establishing the circumstances of any persuasion or assistance to take the life of Mr. AW, i.e. . for a crime under Art. 151 of the Penal Code

It requires attention that the processing of personal data of persons affected by the activities of the Police is authorized by law, including Act of April 6, 1990 on the Police (Journal of Laws of 2019, item 161, as amended). Pursuant to Art. 1 clause 2 point 8 of this Act, the basic tasks of the Police include the processing of criminal information, including personal data.

There is no doubt that in the light of the circumstances described above, the Police officers were entitled to process the personal data of Mr. A. W. Adopting a different view would lead to a situation in which the Police would not be able to perform statutory tasks preventing crime, prosecuting crimes and executing penalties.

At this point, it should be emphasized that the Municipal Police Commander in B. is the data administrator, within the meaning of Art. 7 point 4 of the Act of August 29, 1997 on the protection of personal data.

On the basis of the collected evidence and the complainant's statements, it cannot be concluded that in the course of the activities of the Police officers in B., the complainant's personal data was disclosed to unauthorized persons. Referring to the complainant's allegations, the Municipal Police Commander in B. emphasized that as a result of questioning the Police officers participating in the night intervention [...] on [...] June 2016 and the officers assigned to inform the applicant's immediate family about event, it was found that they did not provide information about the event to unauthorized persons. Moreover, the coincidence of events resulting from the submitted documents, including the official notes of Police officers, indicates that the circumstances of the incident in question were known to outsiders, including the applicant's family, his cohabitant and eyewitnesses. As a result, it is impossible to establish who is the source of the leakage of information on the circumstances of Mr AW's suicide attempt. The accusation raised by the complainant that the source of disseminating information about who tried to commit suicide and the circumstances of the whole event were officers of the Municipal Police Headquarters in B. evidence. The applicant only indicated that he had learned that the information about the above incident was disseminated by the Police. However, he did not disclose from whom he obtained this information, which made it impossible to determine whether the information was actually disseminated and the degree of its credibility.

As a result of the above findings and considerations, the authority concluded that there was no breach of the provisions on the protection of personal data. The police, fulfilling the legal obligation resulting from special provisions, collected and processed the complainant's personal data in a proper and adequate manner. In the course of the conducted proceedings, it was not revealed that the Police disclosed the complainant's personal data to unauthorized persons.

For the above reasons, the President of the Personal Data Protection Office resolved as at the outset.

The party has the right to appeal against the decision to the Provincial 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 Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

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