

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 29

of August

2019

## DECISION

ZSOŚS.440.30.2018

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. 22 and art. 23 sec. 1 point 2 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. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws, item 1000, as amended) after administrative proceedings regarding the complaint of Mrs. IL (residing [...]) against the processing of her personal data by the President of the District Court in B. (ul. [...])

I refuse to accept the application

### Justification

On [...] February 2018, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms IL, hereinafter referred to as the "Applicant", about the processing of her personal data by the President of the District Court in B. W the content of the letter The complainant indicated that she was submitting a notification of suspicion of committing an offense specified in chapter 8 of the Act on the Protection of Personal Data. In response to the complainant's request, on [...] April 2018, the Inspector General for Personal Data Protection called on the complainant to supplement the formal deficiencies in the complaint. Moreover, the complainant was instructed that, in accordance with the judgment of the Supreme Administrative Court of 19 November 2001, "a person seeking protection of his / her cases under the aforementioned Act on the Protection of Personal Data is not the subject of proceedings aimed at issuing a decision notifying a relevant authority about a crime in the scope of processing personal data and cannot demand it from GIODO in the administrative and legal forms of this procedure "(reference number II SA 2702/00), and indicated that if, in the opinion of the complainant, a crime had been committed, it may notify the relevant locally law enforcement agencies by submitting an appropriate notification of suspicion of a crime. In reply, the applicant, in a letter of [...] May 2018, again indicated the President of the District Court in B. as the entity whose actions she complains about, asking for a positive settlement of the

complaint. As a result of the above letter, the President of the Personal Data Protection Office [...] on September 2018 issued a decision to return the complainant's request due to the failure to pay by the above-mentioned receivables by way of stamp duty, within the time limit set for this activity. On [...] October 2018, the Office for Personal Data Protection received a letter from the Complainant with a copy of the order to transfer the amount as stamp duty of [...] May 2018. This letter was treated as a complaint against the above-mentioned resolution.

In view of the above circumstances, it should be concluded that the applicant had paid the stamp duty in the amount due. However, in connection with the payment of the payment after the deadline, the President of the Personal Data Protection Office issued [...] October 2018 a decision stating that the deadline for lodging a complaint was not met. In response, in a letter of [...] December 2018, the complainant indicated that due to her health condition, she could not pay the payment within the deadline indicated by the President of the Personal Data Protection Office. Taking into account the above circumstance and the wording of Art. 58 of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "Kpa", according to which, in the event of failure to meet the deadline, the deadline should be resumed at the request of the person concerned, if it becomes probable that the failure occurred without his fault, the President of the Personal Data Protection Office found it justified pursuant to art. 138 § 1 point 2 of the Code of Administrative Procedure in connection with joke. 144 of the Code of Administrative Proceedings to repeal the decisions of the President of the Personal Data Protection Office of [...] September 2018, issuing a decision in this regard of [...] January 2019. Then, [...] March 2019, the President of the Data Protection Office Osobowych asked the President of the District Court in B. to submit explanations in this case, about which he informed the applicant in a letter of [...] March 2019. In a letter of [...] April 2019, the President of the District Court in B. filed explanations in the matter at hand. In connection with the above, on [...] May 2019, the President of the Personal Data Protection Office informed the parties about the collection of material sufficient to issue an administrative decision, informing at the same time about the possibility of reading the files of the administrative procedure. On the basis of the materials collected in the case, the President of the Office for Personal Data Protection established the following facts:

On [...] October 2016, the files of the case conducted in the District Court in B. Labor and Social Insurance Department, containing the applicant's personal data, were sent to the expert for a supplementary opinion.

The sent files contained the complainant's data, including name and surname, date of birth, address, PESEL number and

medical documentation.

Due to the lack of receipt of the return acknowledgment of receipt to the District Court in B. [...] November 2016, a complaint was filed with the postal operator who provided the parcel delivery service.

By letter of [...] February 2017, the operator informed the President of the Court that the shipment in question was considered lost. In response to the letters of the President of the Court of [...] March 2017 and [...] April 2017, the postal operator again informed that the parcel had not been found.

In view of the above, the District Court in B. May 2017 issued an order to initiate proceedings to restore files.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

At the outset, it should be noted that pursuant to Art. 160 sec. 1 and 2 of the Act of 10 May 2018 (Journal of Laws, item 1000, as amended) on the protection of personal data, proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, are conducted by Of the President of the Office on the basis of 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", in accordance with the principles set out in the Code of Administrative Procedure.

The Act defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Act). In the event of a breach of any of these principles, in particular Art. 23 or article. 27 of the Act, the President of the Personal Data Protection Office pursuant to Art. 18 sec. 1 of the act issues an administrative decision. In this regard, it may order the data controller to remove deficiencies (Article 18 (1) (1) of the Act), supplement, update, rectify, disclose or not disclose personal data (Article 18 (1) (2) of the Act).

In the present case, however, there are no conditions for the application of any of the above-mentioned orders. It should be noted that the President of the District Court in B. was not the entity delivering the parcel containing the files of the proceedings, and thus the applicant's personal data. The service was commissioned to the postal operator, Poczta Polska S.A. Moreover, it should be emphasized that in the case at hand, the President of the District Court in B. took steps to determine the status of the shipment, initiating the complaint procedure. Due to the failure to find the said parcel, the President of the Court also took steps to restore the files in question. Thus, it cannot be concluded that the actions of the President of the District Court in B. in the scope including the complaint constituted a breach of the applicant's right to protection of personal

data.

The complainant also referred to the criminal provisions of the Act on the Protection of Personal Data. At this point it should be pointed out again that in the light of the provisions of Art. 18 sec. 1 and art. 19 of the Act on the Protection of Personal Data, the person concerned may request the President of the Personal Data Protection Office only to issue an administrative decision, while the notification of a crime is within the administrative discretion of the authority, about which the complainant was informed. On the other hand, pursuant to Art. 19 of the Act, if it is found that the action or omission of the head of the unit, the head of the organizational unit, its employee or another natural person being the data controller meets the criteria of an offense specified in the Act, the President of the Office for Personal Data Protection sends a notification about the commission of the crime to the body appointed to prosecute crimes, by attaching evidence of the suspicion. The facts of the present case do not, however, provide grounds for such actions.

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

Based on Article. 127 § 3 of the CAP, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he has the right to lodge a complaint against the decision with 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 Personal Data Protection Office (ul. Stawki 2, 00-193 Warsaw). 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.

2019-09-04