

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 17

April

2019

## DECISION

ZSOŚS.440.47.2019

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), after conducting administrative proceedings regarding the complaint of Ms AS against disclosure of personal data collected in the course of explanatory proceedings in the case of a traffic violation,

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 Ms AS, hereinafter referred to as the "Complainant", about disclosure of her personal data by the Municipal Office of C. with its registered office: [...], in connection with the performance of activities explanatory statements by the Municipal Guard in K., which is part of the Municipal Office of K., based at ul. [...], and for the processing of these data by the above-mentioned municipal guard.

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.

The complainant, in a letter of [...] January 2015, reported to the local Office that as a result of the activities carried out in the case of a traffic offense, the Municipal Guard in K. asked the Municipal Office of C. to send a photograph showing her image, to which the complainant she never consented. She claimed that she had learned about the fact of handing over the photograph from the letter of the Municipal Guard in K.

Then, in a letter of [...] March 2015, supplementing the formal deficiencies, the complainant indicated that sharing the image is possible only in a situation where it is necessary for a given body to perform its statutory tasks, while in her opinion the concept of "indispensability" may not mean that by using the provision of art. 44h of the Act of April 10, 1974 on the population records and identity cards (Journal of Laws 2006 No. 139, item 993 as amended, hereinafter: the Act on the population records and identity cards), authorities authorized to obtain personal data may obtain them in an automatic manner, i.e. without performing other possible activities, and in addition in a manner that is obviously inconsistent with reality. The complainant assessed that such understanding of Art. 44h is abusive.

By letters of [...] July 2015, the Inspector General for Personal Data Protection asked the Commander of the Commune Guard in K. and the Head of the Commune of C. to comment on the content of the complaint and to submit written explanations, enclosing a copy of the complaint together with the Complainant's letter supplementing the deficiencies formal.

In explanations submitted to the Inspector General for Personal Data Protection, the Commander of the Commune Guard in K., responding to the content of the complaint of Ms AS, indicated that the statutory delegation to apply to the Commune Office of C. with a request for access to personal data, including the image of Ms AS, is art. 44h of the act on population records and identity cards. He added that the requested data, including the image, were necessary for the implementation of the statutory tasks of the Municipal Guard in K., resulting from the investigation in connection with the disclosed traffic offense. The Commandant explained that due to the refusal to accept the mandate, the Commune Guard in K. was obliged to obtain

evidence of the offense, including the image of the applicant. To the explanations, the Commander of the Municipal Police in K. attached an application form for the disclosure of data and a reply from the Commune Office in C., which shows that the Commune provided the complainant's personal data in the form of: PESEL number, first and last name, parents' names, mother's birth name, place of birth, registered address, series and number of the identity card and the date of its issue, and a photocopy of the applicant's photograph with an image of her face.

In a letter of [...] August 2015, the Head of the Commune of C. confirmed that the Commune Guard in K. asked the Commune of C. about the above-mentioned personal data of the complainant. The commune administrator referred to the legal basis for disclosing the complainant's personal data and stated that the image of complainant A. S. had been obtained by the commune administrator of C. on the basis of the complainant's request for an identity card. It also pointed out that the requirement to attach to the application for an ID card the photograph of the person to whom the application relates was specified in §1 sec. 5 of the Regulation of the Council of Ministers of November 21, 2000 on the specimen of an identity card and the procedure to be followed in matters of issuing identity cards, their cancellation, their exchange, return or loss (Journal of Laws No. 112, item 1182, as amended) . To the letter, the Head of the Commune C. attached a copy of the request of the Commune Guard in K. and the reply to this request, as well as the request for an identity card, which in 2007 the claimant A. S. submitted to the Commune Office. The circumstances referred to by the commune administrator indicate from the aforementioned documents. By letters of [...] July 2018, the complainant, the Head of the Commune of C., the Commander of the Commune Guard in K. and the Head of the Commune of K. were informed that an administrative decision would be issued on the basis of the collected evidence. The parties were informed that within 7 days of the delivery of this letter to them, they have the opportunity to comment on the collected evidence and materials as well as on the demands made. Until the date of this decision, neither party responded to the collected evidence.

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 her image, in connection with the misdemeanor proceedings conducted by the Municipal Guard in K.

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 case, either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuing 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, as 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 understood as any information relating to an identified or identifiable natural person (Article 6 (1) of the Act). Pursuant to Art. 3 sec. 1 above the Act applies to state bodies, local self-government bodies and to state and municipal organizational units. For this reason, it is obliged, inter alia, to comply with its provisions municipal guard. 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 first thing to consider was whether the Municipal Office in C. was entitled to disclose personal data without the consent of the person concerned, if they were necessary to conduct proceedings in a traffic offense. Moreover, it had to be determined whether the Municipal Guard in K. was entitled to process the image of the Complainant, i.e. whether it performed its statutory tasks when processing the Complainant's data and whether the data requested by the Municipal Office in C. were necessary for the performance of these tasks.

When carrying out the legal analysis of the facts in this case, the President of the Personal Data Protection Office had regard

to the provisions of the Act on population records and identity cards in force at the time when the Municipal Guard in K. asked for personal data, including the image of the complainant, to the Commune C.

Pursuant to Art. 44 h of paragraph 1. 1 of the above Act, data from registration files, PESEL files and records of issued and invalidated identity cards shall be made available, provided that they are necessary for the performance of their statutory tasks, to entities listed in points 1-5 of the said provision. Among these entities, the legislator also mentioned communal guards. Therefore, there is no doubt that the Municipal Guard in K. had a legitimacy to apply for the disclosure of the personal data of the complainant, Ms A. S.

It requires attention that the processing of personal data of persons affected by the activities of the Municipal Guard is authorized by law, i.e. the Act of August 29, 1997 on Municipal Guards (Journal of Laws of 2018, item 928, as amended) .

Pursuant to Art. 10a paragraph. 1 of this Act, in order to perform statutory tasks, the guard may process personal data, with the exception of data revealing racial or ethnic origin, political views, religious or philosophical beliefs, religious, party or union affiliation, as well as data on health, genetic code, addictions or sexual life, without the knowledge and consent of the data subject, obtained: 1) as a result of the activities undertaken in the proceedings in misdemeanor cases; 2) from registers, records and files to which the fire brigade has access on the basis of separate regulations.

At this point, it should be emphasized that the Commander of the Commune Guard in K. 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.

Subsequently, it required examining whether the C. Commune Office was entitled to store AS personal data, which the complainant also questioned, arguing that storing photographs in conditions unknown to her, their transfer and use to make erroneous findings in the course of proceedings in misdemeanor cases constitutes in her assessing violation of the provisions of the Act on the Protection of Personal Data.

Meanwhile, according to Art. 44e paragraph. 1 of the Act on the population register and identity cards, municipal authorities, on the basis of the data reported when applying for the issuance or replacement of an identity card, as well as data obtained in connection with the performance of the obligations referred to in art. 14 and art. 42, keep records of issued and invalidated identity cards. These records include, inter alia, an image of the face of the ID card holder (section 3 point 8). It is worth noting that statutory provisions or lower rank regulations do not provide for a period in which personal data of persons included in these records may be kept.

The commune's right to disclose personal data from registration files and records of issued and invalidated identity cards results directly from Art. 44i paragraph. 1 of the act on population records and identity cards.

The analysis of the collected evidence proves that the complainant's personal data were processed only in connection with the proceedings in the case of a traffic offense. It should be noted that the initiation of the proceedings was justified due to the investigation, ie the identification of the person driving the car, which was registered by the speed camera, and the referral of the case to the court.

There is no doubt that in the light of the above-described circumstances, the Municipal Guard in K. was entitled to process the personal data of Ms A. S. Adopting a different view would lead to a situation in which the Municipal Guard would not be able to perform its statutory tasks of protecting public order.

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 Commune Guard in K., fulfilling the legal obligation resulting from the provisions of the Act on Commune Guards, collected and processed the complainant's personal data in a proper and adequate manner.

For the above reasons, the President of the Personal Data Protection Office resolved as in the introduction.

Based on Article. 9 sec. 2 of the Act of 6 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), from this decision, the party has the right to lodge a complaint against the decision of the President of the Office for Personal Data Protection to Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party.

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