

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

May

2020

## DECISION

ZKE.440.87.2019

Based on Article. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended) in connection with joke. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with joke. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 57 sec. 1 lit. f) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals 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 May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2) after conducting administrative proceedings regarding the complaint of Mrs. DP, regarding the processing of her personal data by the Foundation [...], the President of the Personal Data Protection Office,  
  
discontinues the proceedings.

## JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms D. P., hereinafter referred to as "the Complainant", about the processing of her personal data by the Foundation [...], hereinafter referred to as "the Foundation".

In the content of the complaint, the complainant requested that the quote "control regarding the compliance of the processing of her personal data by the Foundation" be carried out. She argued that she had never consented to the processing of her personal data by the Foundation, therefore, quoted "she has doubts whether her data was obtained in accordance with the law and whether it is processed in accordance with the Personal Data Protection Act (...)".

In the course of the investigation conducted in this case, the President of the Personal Data Protection Office established the following facts:

The applicant received a letter from the Foundation of [...] September 2017, signed by the President of the SO, urging her to quote 'to pay the Foundation's bank account the amount of PLN 20, PLN 30, PLN 50 or PLN 100 to support the campaign to promote the Rosary in the whole Poland ". The foundation in the above-mentioned the letter indicated that the personal data of Ms D. P. cit. "come from the database administered by C. Sp. j. and were made available for single use for marketing purposes "(proof: letter of the Foundation of [...] September 2017).

In connection with the above, the complainant turned to C. Sp. j. with the question on what basis the Foundation came into possession of its personal data. In response, C. Sp. j. stated that the personal data of Ms D. P. had been obtained during the telemarketing campaign carried out on [...] November 2008, in which the telemarketer noted the complainant's consent to send the company B's catalog and to receive additional information materials in the future. At the same time, company C. informed that the Complainant's personal data had been permanently removed from the database on [...] October 2017 and ensured that the company and its cooperating entities would cease sending promotional materials (evidence: attachment to the complaint, i.e. letter company C. of [...] October 2017).

In explanations of [...] May 2018, the Foundation stated that it obtained from a database broker, i.e. S. Sp. z o.o., the complainant's personal data under contract No. [...] of [...] July 2017 regarding the provision of databases. The Foundation indicated that the primary administrator of the complainant's data was C. Sp. j. The Foundation explained that the quotation quoted "The complainant's data was obtained and used (...) to carry out a one-time action consisting in sending a rosary on the occasion of the centenary of the Apparitions of Fatima, addressed to people whose data are in the licensed database - in order to obtain donations for the statutory activity of the Foundation. The scope of the complainant's personal data (...) includes the content of the provided record in the result database, ie name and surname and postal address ". At the same time, the Foundation stated that currently quoted "the complainant's personal data are not processed and are not stored in the Foundation's personal data file (...) they were used once, in accordance with the concluded contract" (proof: Foundation letter of [...] May 2018 .).

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

On May 25, 2018, with the entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000), the Office of the Inspector General for Personal Data Protection became the Office of Personal Data Protection Personal Data. Proceedings conducted by the Inspector General for Personal Data Protection, initiated and not

completed before May 25, 2018, are conducted by the President of the Personal Data Protection Office, pursuant to the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) in accordance with the principles set out in the Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended), hereinafter referred to as "the Code of Administrative Procedure". All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1) and (2) of the Act of May 10, 2018 on the protection of personal data). Pursuant to Art. 57 sec. 1 letter f) of the Regulation of the European Parliament and the EU Council 2016/679 of 27 April 2016 on the protection of individuals 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 the protection of personal data) (OJ L 119 of 4 May 2016, p. 1 and EU Official Journal L 127 of 23 May 2018, p. 2), without prejudice to other tasks specified under this Regulation, each supervisory authority its territory shall deal with complaints lodged by the data subject or by a body, organization or association in accordance with Art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to pursue further proceedings or coordinate actions with another supervisory authority.

At the outset, it should be noted that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the facts existing at the time of issuing this decision. As the doctrine points out, "the public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that a public administration authority issues an administrative decision based on the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure, M. Jaśkowska, A. Wróbel, Lex., EI / 2012).

Moreover, in the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07, the Supreme Administrative Court stated that "when examining the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed on the date of issuing the decision on the matter and whether it is done in a legal manner".

Referring the above to the established facts, it should be emphasized that the decisive factor for the decision that must be issued in the case at hand is the fact that the complainant's personal data are currently not processed by the Foundation.

Therefore, it should be stated that the proceedings have become redundant and therefore should be discontinued.

Pursuant to Art. 105 § 1 of the Code of Administrative Procedure, when the proceedings for any reason become groundless in whole or in part, the public administration body issues a decision to discontinue the proceedings, respectively, in whole or in part. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed groundless, the authority conducting the procedure will obligatorily discontinue it. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative Proceedings means that there is no element of the material legal relationship, and therefore it is not possible to issue a decision settling the matter by deciding on its substance (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Comment" 7th edition Wydawnictwo CH Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 (III SA / Kr 762/2007): "The procedure becomes redundant when one of the elements of the substantive legal relationship is missing, which means that the case cannot be settled by deciding on the substance".

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery 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 (address: ul. Stawki 2, 00-93 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. However, due to the state of epidemic in force on the date of the decision, pursuant to Art. 15zzr paragraph. 1 point 1 of the Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374), hereinafter referred to as hereinafter referred to as the "COVID-19 Act", this period will not start to run at present; it will run:

- on the day following the last day of an epidemic or immediately following a possible state of epidemic threat,

Alternatively

- on the day following the last day of application of Art. 15zzr paragraph. 1 point 1 of the COVID-19 Act, in the event of its repeal before the end of the epidemic or epidemic threat.

2021-03-08