

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

June

2019

## DECISION

ZSOŚS.440.100.2018

Based on Article. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096), art. 12 point 2, art. 22 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 of the Act of February 6, 2018 on the Protection of Personal Data (2019, item 125), following administrative proceedings regarding the complaint of Mr. L. S. in N. for the disclosure of his personal data by the District Prosecutor's Office in B. for Mrs. A. L. who is the head of the Municipal Social Welfare Center in N.

I discontinue the proceedings

### Justification

The Office of the Inspector General for Personal Data Protection (currently: the Personal Data Protection Office) received a complaint from Mr. L. S. (hereinafter referred to as: "the Complainant") from in N. for the disclosure of his personal data by the District Prosecutor's Office in B. for Mrs. A. L. who is the head of the Municipal Social Welfare Center in N.

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 (Journal of Laws of 2018, item 1000, as amended), i.e. May 25, 2018, the General Office The Personal Data Protection Inspector has become the Office for Personal Data Protection. 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 on the basis of 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. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In the course of the investigation in this case, the President of Personal Data Protection determined the following.

From the explanations provided in the letter of [...] January 2019 by the District Prosecutor's Office in B. it appears that the District Prosecutor's Office in B. obtained the applicant's personal data pursuant to Art. 191§1, art. 119§1, art. 180 §1 and

article. 218§1 of the Code of Criminal Procedure. It also explained that at present the District Prosecutor's Office in B. did not process the applicant's personal data. She pointed out that the complainant's personal data had not been made available to Ms A. L., who was the head of the Municipal Social Welfare Center in N., additionally stressed that no one had asked for them to be made available.

Moreover, in a letter of [...] January 2019, A. L. explained that, to the best of her knowledge, the District Prosecutor's Office in B. had not disclosed the complainant's personal data to the Social Assistance Center in N., of which he was the head.

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

From the established tactical state of the case, it appears that the applicant's personal data was never disclosed by the District Prosecutor's Office in B. to Ms A. L., which renders the proceedings redundant.

In this situation, the proceedings are subject to discontinuation pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096), hereinafter referred to as the Administrative Procedure Code, due to its redundancy. In accordance with the above-mentioned a provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority 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 body 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 Procedure means that there is no element of a material legal relationship, and in relation to Lego, no decision can be issued settling the matter by resolving it on its merits (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".

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure obliged him to discontinue the proceedings, because then there is no basis for resolving the matter of substance, and further conduct of the proceedings in such a case would make it defective, significantly affecting the result of the case. Therefore, the present proceedings are irrelevant, and thus, it should be stated that the President of the Office is not

authorized to issue a substantive decision in this case.

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

Pursuant to Art. 9 sec. 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), the parties have 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 2.00-193 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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