THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 19

January

2019

DECISION

ZSZZS.440.104.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (i.e. Journal of Laws 2018, item 2096) and art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (i.e. Journal of Laws of 2016, item 922) in connection with Art. 160 sec. 1 and sec. 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000) and art. 9 sec. 2 point b and h of 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 (Journal .U.UE.L.2016.119.1), after conducting administrative proceedings regarding the complaint of Ms IW, about irregularities in the processing of her personal data by [...] Military Economic Department with its seat in W., consisting in disclosing her personal data concerning health in the document circulation system [...] for third parties, President of the Office for Personal Data Protection

refuses to accept the request.

Justification

The Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Ms IW, hereinafter referred to as the Complainant, about irregularities in the processing of her personal data by the [...] Military Economic Department based in W., hereinafter referred to as the Military Unit or the Employer consisting in making her personal health data available in the document workflow system [...] to third parties.

In the course of the administrative proceedings, the President of the Personal Data Protection Office, hereinafter referred to as the President of the Office, established the following facts:

The applicant is a professional soldier and serves in the Military Unit with the degree of […].

In the letter of [...] the District Military Medical Commission in Ż. sent the Employer three copies of the decision No. [...], two of which in the part concerning diagnosis contained only paragraph numbering (without specifying the names of diseases and

disabilities), and one contained a detailed indication of diseases and disabilities.

The employer explained that the applicant, as a professional soldier, is subject to the provisions of the Act of 11 September 2003 on the military service of professional soldiers (i.e. Journal of Laws of 2018, item 173), which, inter alia, imposes an obligation for the commander of a military unit to keep records, which include, inter alia, health data, moreover, the processing of these data may take place without the knowledge and consent of the data subject. He also indicated that a copy of the decision of the Military District Medical Commission in Ż. containing the indication of diseases and disabilities, was delivered to the applicant on [...].

The employer indicated that the decision of the Military District Medical Commission in Ż. via e-mail, used to handle the electronic circulation of public documents through the electronic system [...] functioning in the Military Unit, the Commander of the Military Unit provided: RP, JK, JB, WP, KB, AF, AK, and also DP, which transferred document for the 1st assignment for the Republic of Poland

All of the above persons are authorized to access the processing of personal data in the collections of the Military Unit, issued on the basis of art. 37 of the Act of August 29, 1997 on the Protection of Personal Data.

Having read the entirety of the evidence collected in this case, the President of the Personal Data Protection Office considered the following.

First of all, it should be noted 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) [hereinafter referred to as the Act of 2018], the Bureau of the Inspector General for Protection Personal Data has become the Office for Personal Data Protection. Proceedings conducted by the Inspector General, 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 (i.e. Journal of Laws of 2016, item 922). ) [hereinafter referred to as the 1997 Act] in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (i.e. Journal of Laws of 2018, item 2096) [hereinafter referred to as the Administrative Procedure Code]. All activities undertaken by the Inspector General before May 25, 2018 remain effective.

In addition, it is necessary to emphasize that the President of the Personal Data Protection Office, hereinafter referred to as the President of the Office, when issuing an administrative decision, is obliged to settle the case based on the actual state of affairs at the time of issuing this decision. As argued in the doctrine, "a 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., El / 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 personal data processing, GIODO is obliged to determine whether, as at the date of issuing the decision in the case, the data of a specific entity are processed and whether it is done in a lawful manner ".

In the case at hand, with regard to the assessment of the disclosure of the complainant's personal data to third parties by the administrator of personal data, it is appropriate to apply the provisions in force at the time when the administrator undertook these activities, i.e. the Act on the Protection of Personal Data of 1997. Nevertheless, Considering that the state of data processing challenged by the Complainant continues on the date of this decision, it is also necessary to evaluate the employer's performance in terms of the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) (Official Journal of the European Union, L 119, 4 May 2016), hereinafter referred to as the GDPR.

Pursuant to Art. 27 sec. 1 of the Act of 1997, the processing of health data (also understood as making them available) was prohibited. The legislator, however, provided for exceptions to this rule. Any form of personal data processing, the so-called "Sensitive", the exhaustive catalog of which is specified in Art. 27 sec. 1 of the Act of 1997 should have been based on one of the premises listed in Art. 27 sec. 2 of the Act of 1997. The regulation allowed for the processing of sensitive data, not only when the data subject consented to it in writing, but also, inter alia, in a situation where a special provision of another act allowed the processing of such data without the consent of the data subject and created full guarantees of their protection, and when the processing was necessary to perform the tasks of the data controller relating to the employment of employees and other persons, and the scope of data processed was specified in the Act.

The position of the Military Unit should be shared that the data on the health condition, as data on a professional soldier, had to be included in the military records kept by the commander of the military unit. The above is justified in Art. 48 of the Act of September 11, 2003 on the military service of professional soldiers (i.e. Journal of Laws of 2018, item 173). Moreover, this provision in par. 6 provides that the processing of these data may take place without the knowledge and consent of the data subject. It cannot be agreed with the Complainant that her employer allowed an unlimited number of people to have access to the data on her health condition and that so far unauthorized persons have read them. In this regard, the evidence submitted by the Complainant fully corresponds to the explanations and documentation provided by the Employer. The electronic document circulation system [...] operating at the Military Unit shows that the data on the applicant's health was made available by the unit commander only to authorized persons, i.e. RP, JK, JB, WP, KB, AF, AK, and also DP , except that the above-mentioned she merely handed over the document for the 1st assignment for R. P. Each of these persons received information about the applicant's health condition for a strictly defined purpose, related to the tasks that she performed in connection with the employment in the Military Unit. They were the applicant's superiors who acted as commanders and persons performing tasks related to human resources activities or keeping record documents, including legal advisers.
The employer has submitted documentation in the form of authorizations issued pursuant to Art. 37 of the Act of 1997 on the processing of personal data. Thus, in the opinion of this authority, the persons who had access to the complainant's personal data contained in her medical certificate were authorized by the Employer to process such data in connection with the tasks and obligations performed as part of the official relationship. According to the content of Art. 37 of the 1997 Act, only persons authorized by the data controller could be allowed to process data. The legislator did not prejudge neither the content nor the form of the authorization to process data issued by the data controller. However, the evidentiary reasons justify the fact that such authorization should be in writing, as is the case in the case at hand. The authorization had to be personal, and it should also define the permitted scope of data processing. It should be issued not only to persons who have been directly employed to conduct data processing, but also to other persons who may participate in such processing (heads of organizational units, employees of the human resources and payroll departments, etc.). In practice, the granting of the authorization should have been related to the signing by the person receiving the authorization of a statement on reading the provisions on the protection of personal data and on acknowledging the obligation of confidentiality [see also Commentary to Art. 37 of the Act, J. Barta, P. Figielski, R. Markiewicz, lex]. In the opinion of the President of the Office, the persons to whom the Employer provided the

Complainant's personal data were authorized by him in accordance with Art. 37 of the Act of 1997. The consequence of the above is the assumption that pursuant to Art. 26 sec. 1 point 1 of the Act of 1997, the data controller processing the data had to exercise special care to protect the interests of the data subjects, in this case the complainant, and in particular was obliged to ensure that the data was processed in accordance with the law. As a result of this principle, every action of the data controller related to data processing had to have its legal justification and comply with the existing legal regulations, which principles, in the opinion of this authority, were not violated by the employer.

In the opinion of this authority, the Military Unit processes personal data concerning the applicant's health properly also at the present time. According to Art. 9 sec. 1 GDPR, the processing of data relating to health is prohibited. Nevertheless, paragraph 2 above the provision allows the processing of these data, despite the lack of consent of the data subject, if the processing is necessary for the purposes of preventive healthcare or occupational medicine, for the assessment of the employee's ability to work, medical diagnosis, provision of health care or social security, treatment or system management, and healthcare or social security services on the basis of Union or Member State law or pursuant to a contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3. Importantly, however, for the said decision, in the opinion of this authority, valid under Art. 29 GDPR, the authorizations submitted by the Employer in the course of the proceedings remain. Pursuant to Art. 29 GDPR, the processor and any person acting under the authority of the controller or the processor and having access to personal data, process them only at the controller's request, unless required by EU law or the law of a Member State.

To sum up, the President of the Office did not find any violation of the provisions on the protection of personal data by the Military Unit, and thus there were no grounds for issuing a decision ordering, in accordance with Art. 18 of the 1997 Act

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

Based on Article. 127 § of the Code of Civil Procedure from this decision, 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. The entry fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs or the right to assistance.

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