THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

April

2021

DECISION

DKE.523.8.2021

Based on Article. 105 § 1 of the Act of 14 June 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) and in connection with joke. 12 point 2 and art. 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. a) and 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 protection of personal data) (Journal of Laws UE L 119 of 4 May 2016, p. 1 and Journal of for the processing by Ms MF and Ms PF of the personal data of Ms Poland and Ms BW in the video monitoring system, 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 Poland and Ms BW (hereinafter referred to as: the Complainants) about irregularities in the processing of their personal data by Ms MF and Mr PF consisting in recording their image using video monitoring. In the content of the complaint, the complainants asked for the removal of personal data in the form of their images recorded by video surveillance from all data carriers.

In addition, on [...] March 2021, Ms Poland and Ms BW informed the personal data protection authority that Ms MF and Ms PF did not reside in [...] from August 2020 and therefore requested that their place of residence be determined of residence, because, as they put it (quoted): "The State F. try to avoid responsibility in various other administrative matters, eg [...]".

In the course of the explanatory proceedings in this case, the President of the Personal Data Protection Office established the following facts.

The attorney of Ms M. F. and Mr P. F. - in written explanations of [...] March 2021 submitted in these proceedings - indicated that:

1. On […] August 2020, his Principals sold the property located […] and moved out of that property.

2. From the end of 2019, Ms. M. F. and Mr. P. F. did not activate any cameras located on the building, these cameras did not work, the eyes of the cameras were facing down, which was a clear sign that they were not working.

3. Ms. M. F. and Mr. P. F. did not have recordings from these cameras because they only recorded in "looping" as a preview.

4. All recordings, even briefly recorded on them as part of a given "loop", were permanently and irreversibly removed at the end of 2019.

5. Currently, Ms. M. F. and Mr. P. F. do not have the above-mentioned cameras, or any recordings from those cameras.

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

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "the Act on the Protection of Personal Data of 2018" entered into force. . Pursuant to Art. 160 sec. 1-3 of the Act on the Protection of Personal Data of 2018, 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 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), hereinafter referred to as the "Personal Data Protection Act of 1997, in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure. (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "Kpa". At the same time, the activities performed in the proceedings initiated and not completed before the date of entry into force of the provisions of the Act on the Protection of Personal Data of 2018 remain effective.

From May 25, 2018, also Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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), hereinafter referred to as "Regulation 2016 / 679 ".

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted on the basis of the Personal Data Protection Act of 1997 (with regard to the provisions governing the

administrative procedure) and on the basis of Regulation 2016/679 (to the extent decisive about the legality of the processing of personal data).

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks set out under this Regulation, each supervisory authority on its territory monitors and enforces the application of this Regulation (point a) and considers complaints submitted by the data subject or by an entity, 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 continue investigations or coordinate actions with another supervisory authority (point f).

It should be noted here that the President of the Office, when issuing an administrative decision, is obliged to make a decision based on the actual state of affairs at the time of issuing the decision. As the doctrine quotes: “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). Also in the judgment of May 7, 2008 in the case no. 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 and whether it is done in a manner consistent with law ”.

Referring the above to the established facts, it should be emphasized that the decisive factor for the decision that must be issued in the present case is the fact that Ms. M. F. and Mr. P. F. do not currently process the complainants' personal data in the video monitoring system. The findings of the President of the Personal Data Protection Office showed that Ms. M. F. and Mr. P. F. sold the property located [...] with video surveillance cameras, and all recordings from these cameras were permanently and irreversibly removed at the end of 2019.

In this situation, these proceedings are subject to discontinuation pursuant to Art. 105 § 1 of the Code of Administrative

Procedure, in view of 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 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 30 January 2019 (I SA / Kr 1289/18, LEX No. 2622023): “The definition of Art. 105 § 1 of the Code of Civil Procedure << proceeding for any reason has become redundant >> because it covers situations where a party's request is out of date or has expired by operation of law. It is possible to speak about the pointlessness of the proceedings in the case when there is no party to it or there is no object, i.e. there is no legal and factual basis for considering and settling the case "

On the other hand, referring to the Complainants' request to establish a new address of residence of Ms M. F. and Mr P. F., it should be noted that the President of the Personal Data Protection Office has no right, and even more so, no obligation to establish data concerning the new address of the parties to the proceedings for purposes other than those strictly related to this proceeding. In the proceedings in question, the determination of the new address of Ms M. F. and Mr P. F. is not justified, because the attorney appointed by them correctly performs the procedural obligations.

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 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. The party has the right to waive the right to request a retrial. The waiver of the right to submit an application for reconsideration makes the decision final and binding. 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 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.

2021-05-13