

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 06

April

2019

## DECISION

ZSPU.421.2.2018

Based on Article. 104 § 1 and 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096 as amended) and Art. 57 sec. 1 letter a) and art. 58 sec. 2 lit. d) 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) in connection with joke. 5 sec. 1 lit. f), art. 13 sec. 1 lit. c) and e), Art. 13 sec. 2 lit. a) and e), art. 24 sec. 1, art. 28 sec. 3 lit. e), f), h) and art. 30 sec. 1 lit. d) and f) of the general regulation on data protection, after conducting administrative proceedings on the processing of personal data by the President of the City of W., the President of the Office for Personal Data Protection

I. Orders the President of the City of W. to remove the deficiencies in the processing of personal data by:

Fulfillment of the information obligation regarding information regarding persons who fulfill the registration obligation:

about all recipients of personal data indicated in art. 13 sec. 1 lit. e) the general regulation on data protection, in particular on the parties and participants of administrative proceedings conducted in registration cases and about the period for which personal data will be stored in accordance with art. 13 sec. 2 lit. a) of the General Data Protection Regulation.

Recognition in the register of personal data processing activities, for processing activities related to keeping the register of residents, information:

about all recipients of data to whom the data has been or will be disclosed in accordance with art. 30 sec. 1 lit. d) the general data protection regulation and about the planned date of data deletion in accordance with art. 30 sec. 1 lit. f) General Data Protection Regulation.

II. The remainder of the proceedings is discontinued.

## Justification

Authorized by the President of the Office for Personal Data Protection, the inspectors carried out at the President of the City of W. natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws of the Republic of Poland) UE L 127 of 23/05/2018, p. 2) and the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended). The scope of the inspection covered the manner of keeping and securing the register of residents by the President of the City of W. In the course of the inspection, oral explanations were collected from employees of the City Hall of W. The facts were described in detail in the inspection report, which was signed by the President of the City of W.

On the basis of the evidence collected in this way, it was established that in the process of personal data processing, the President of the City of W., as the data controller, breached the provisions on the protection of personal data. These shortcomings consisted of:

Development of an information clause in the W. 13 of the General Data Protection Regulation, in particular information on all data recipients and did not indicate the date of deletion of data processed in a traditional way. In addition, the clause does not indicate which of the above-mentioned purposes of data processing were carried out by the President of the City of W. and the consequences of not providing personal data were not mentioned.

Including in the register of processing activities of the data set "E.L.", instead of separate activities of personal data processing related to keeping the register of residents, in accordance with Art. 30 of the General Data Protection Regulation. In addition, the register of processing activities does not include information on all recipients of data processed in connection with the keeping of the register of residents, including the parties and participants of administrative proceedings conducted in registration matters. Planned date of deletion of data from the "E.L." file was set for 50 years, while the Regulation of the Prime Minister of 18 January 2011 on office instructions, uniform material lists of files and instructions on the organization and scope of operation of company archives (Journal of Laws of 2011, No. 14, item 67), there are different periods of document storage: a 50-year period is indicated for documents related to the population register, and a 10-year period for registration cases.

Not included in the contract No. [...] of [...] October 2017 concluded with A. S.A., regarding the service of technical support and maintenance of application software Z.S.W.Z.M. - A., the information specified in Art. 28 sec. 3 lit. e), f), h) of the General Data

Protection Regulation, i.e. the obligation of the processor to support the controller in fulfilling its obligations under the General Data Protection Regulation.

Processing of personal data in customer service rooms, where the stands for the issuance of an ID card and stands for persons completing the registration obligation have not been separated from each other by partitions, which would make it impossible to read the data of the person served at the neighboring stand, so as to ensure the confidentiality of personal data processing, in accordance with art. 5 sec. 1 lit. f) General Data Protection Regulation.

Therefore, on [...] November 2018, the President of the Office for Personal Data Protection initiated ex officio administrative proceedings in order to clarify the circumstances of this case (letter reference [...]).

In response to the notification of the initiation of administrative proceedings, the President of the City of W., in letters of [...]

December 2018, no. [...] and of [...] January 2019, no. other evidence to support their removal, which shows that:

The information clause for people who fulfill the registration obligation has been supplemented with information about A. S.A. being the recipient of data under contract No. [...] of [...] October 2018 regarding technical support and maintenance of software for IT system A. The clause indicates the consequences of not providing personal data and indicates which purposes of personal data processing are carried out by the President of the City

The register of processing activities includes four data processing activities under the Population Register Act, including "Handling cases related to the registration obligation" and "Providing data from the register of residents".

The principles of cooperation with A. S.A., are set out in the contract No. [...] of [...] October 2018, which includes the data required for the contract for entrusting the processing of personal data, indicated in art. 28 of the General Data Protection Regulation.

Vertical partitions have been installed between the stands in the customer service room in order to ensure confidentiality for persons meeting the registration obligation.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following:

Pursuant to Art. 13 sec. 1 lit. e) and art. 13 sec. 2 lit. a) of the general regulation on data protection, the controller provides the data subject with the information necessary to ensure fair and transparent processing, i.e. it indicates recipients of personal data or categories of recipients and the period for which the personal data will be stored, and when this is not possible, criteria

for establishing this period. The above-mentioned data is also included by the administrator in the register of processing activities referred to in art. 30 sec. 1 lit. d) and f) of the general regulation, pursuant to which the register shall include information on the categories of recipients to whom personal data have been or will be disclosed, including recipients in third countries or in international organizations, and, if possible, the planned dates of deletion of individual categories of data .

In a letter of [...] December 2018, No. [...], the President of the City of W. sent a model of the modified information clause for persons fulfilling the registration obligation. For documents related to the keeping of the register of residents processed in paper form, no specific date of data deletion has been specified, but the above-mentioned Regulation of the Prime Minister of 18 January 2011 on office instructions, uniform material lists of files and instructions on the organization and scope of operation of company archives. "The EU legislator has imposed an obligation to inform the data subject about the expected time of data processing in the form of a requirement to indicate the period for which the data will be stored. This requirement seems easy to meet when the law clearly specifies the data retention periods (e.g. 2 years, 5 years, 10 years, 50 years). However, in a situation where the provisions do not regulate the time of data processing, in practice it may be difficult to determine this period, and thus informing about it, because sometimes the controller is not able to precisely indicate such a period. In this case, the commented provision imposes an obligation on the controller to indicate the criteria for determining the period of data storage "(P. Fajgielski, Commentary to Regulation 2016/679 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 Data Protection Regulation), [in:] General Data Protection Regulation. Personal Data Protection Act. Commentary, WKP 2018, Lex, commentary to Article 13, point 7). In the above-mentioned In the regulation, specific deadlines for data deletion were indicated, depending on the type of documentation related to the population register, i.e. a period of 50 years is indicated for storing documents related to the population register, and a period of 10 years for registration matters. In connection with the above, the President of the City of W. has the ability to precisely indicate the period of storage of personal data collected in connection with keeping the register of residents. In the same way, i.e. by referring to a legal provision, and not indicating a specific date, although the law specifies such a date, the planned date of deletion of data regarding the registration obligation in the register of processing activities kept by the President of the City of W.

Moreover, both the information clause and the register of processing activities do not contain information on all data recipients, including parties and participants in administrative proceedings in cases for registration or de-registration. The administrator's

duty is, pursuant to art. 12 sec. 1 of the General Data Protection Regulation, taking appropriate measures to provide the data subject in a concise, transparent, understandable and easily accessible form, clear and simple language with all the information referred to in art. 13 and 14 of the General Data Protection Regulation. As part of the measures taken, the administrator's task is to identify and include in the information clause data about all recipients of personal data to whom the data is transferred as part of individual personal data processing activities. The recipient of the data in accordance with the definition of the recipient specified in Art. 4 point 9 sentence 1 of the General Data Protection Regulation is a natural or legal person, public authority, entity or other entity to which personal data is disclosed, regardless of whether it is a third party. In connection with the administrative proceedings conducted by the President of W. Information about these recipients should also be included in the register of processing activities for activities related to keeping the register of residents. Meanwhile, in the information clause and the register of processing activities attached to the letter from the President of W.

In view of the above, it should be considered that the President of the City of W. did not include in the information clause for persons who fulfill the registration obligation, information about the recipients of personal data pursuant to Art. 13 sec. 1 lit. e) the general regulation on data protection and the period for which personal data will be stored in accordance with art. 13 sec. 2 lit. a) of the general regulation on data protection and did not include in the register of processing activities for activities related to keeping the register of residents, information on all data recipients to whom the data has been or will be disclosed in accordance with art. 30 sec. 1 lit. d) the general regulation on data protection and the planned date of data deletion in accordance with art. 30 sec. 1 lit. f) General Data Protection Regulation.

At the same time, on the basis of explanations submitted by the Mayor of W.

In the contract with A. S.A. No. [...] of [...] October 2018, the subject of which is the provision of the service of technical support and maintenance of system A software, the provisions regarding the support by the data controller processing entity in fulfilling the obligations incumbent on the controller in accordance with art. 28 sec. 3 lit. e), f) and h) of the General Data Protection Regulation.

Vertical partitions were installed between customer service stations in a way that ensures the confidentiality of personal data processing to persons complying with the registration obligation, in accordance with art. 5 sec. 1 lit. f) of the General Data Protection Regulation, thus fulfilling the obligation to implement appropriate technical measures under Art. 24 sec. 1 of the General Data Protection Regulation.

The information clause includes information about A. S.A. as the recipient of the data.

Pursuant to Art. 105 § 1 of the Code of Administrative Procedure, 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 premise for the discontinuation of the proceedings, pursuant to Art. 105 § 1 of the Code of Administrative Procedure, the proceeding is groundless "for any reason", i.e. for any reason that results in the lack of one of the elements of the material legal relationship with regard to its subjective or objective party (judgment of the Supreme Administrative Court of 21 January 1999, SA / Sz1029 / 97).

Due to the fact that the remaining shortcomings in the processing of personal data, which are the subject of the present administrative procedure, had been removed, the procedure had to be discontinued in this respect.

In view of the above, the President of the Personal Data Protection Office resolved as in the sentence.

The decision is final. Based on Article. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) in connection with Art. 13 § 2, art. 53 § 1 and article. 54 § 1 of the Act of August 30, 2002, Law on Proceedings Before Administrative Courts (Journal of Laws of 2018, item 1302), the party has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, within the deadline 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 fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs.

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