

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 13

September

2019

## DECISION

ZSOŚS.440.74.2019

Based on Article. 105 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 12 point 2, art. 22 in connection with Art. 23 sec. 1 point 2 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 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) after administrative proceedings regarding a complaint of the Municipal Guard in C. at ul. [...] to the refusal to provide it by the Social Insurance Institution with its seat in W. the personal data of Mr. F. Z., residing in [...] in terms of the name and address of the current or last payer or payers

I discontinue the proceedings

### Justification

On [...] September 2015, the Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from the Municipal Guard in C. with its seat in C. at ul. [...], (hereinafter referred to as: the Complainant), against the refusal of the Social Insurance Institution to provide her with the personal data of Mr. F. Z., residing in [...] with regard to the name and address of the current or last payer or payers.

Justifying the complaint, the Complainant indicated that the personal data for which he is requesting the disclosure is needed to prepare an application for punishment to a common court for the offenses committed, and thus to exercise the right and fulfill the obligation arising from the law to perform a task defined by law for the public good. Moreover, the Complainant pointed out that the information on the name and address of the current or last payer or payers of contributions is a formal requirement for the application for punishment to the court. Failure to provide this data, in the opinion of the Complainant, will make it impossible to draw up an effective application for punishment to a common court for offenses committed.

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office obtained

explanations regarding the circumstances of the case, read the evidence and made the following findings.

1. The Commune Guard in C. was an organizational unit of the Commune of C. operating on the basis of the Act on Commune Guards and on the basis of the regulations of the Commune Guard in C. given the resolution [...] of the Commune Council in C. of [...] May 2004 on the establishment of a commune guard in the commune C. 2. The Municipal Guard in C. conducted investigations against Mr. F. Z. in the case of an offense under Art. 92a of the Act of 20 May 1971 Code of Petty Offenses (Journal of Laws 2019, item 821). 3. By letter of [...]. 03.2015 the Municipal Guard in C. asked the Social Insurance Institution [...] for disclosure of personal data concerning the name and address of the current or last payer or payers of contributions in order to prepare an application for punishment for common court for offenses committed. 4. In a letter of [...] March 2015, the Social Insurance Institution refused to disclose the requested data, referring to the content of Art. 50 sec. 3 of the Act of 13 October 1998 on the social insurance system (Journal of Laws of 2015, item 121) .5. Resolution No. [...] of the C. Commune Council of [...] September 2015 on: liquidation of the Commune Guard, organizational unit of the commune C. under the name of the Commune Guard with its seat in C., ul. [...] was liquidated on [...] November 2016 6. The assets, receivables and liabilities of the liquidated Municipal Guard were taken over by the Municipal Office in C.

In such a factual state, the President of the Personal Data Protection Office considered the following.

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws 2018, item 1000), i.e. May 25, 2018, the Office of the Inspector General for Personal Data Protection became 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, 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 Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, hereinafter: the Code of Administrative Procedure). All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

It should be noted here that on February 6, 2019, 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) entered into force. which in Art. 100 specifies that the proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry into force of this Act, are conducted on the basis of the existing provisions, i.e. the Act of

August 29, 1997 on the protection of personal data (Journal of Laws of 2016, item 922, as amended, hereinafter: the Act of August 29, 1997).

As determined by the authority in the course of explanatory activities on [...] November 2016, Resolution No. [...] of the Municipal Council of [...] September 2015 on: liquidation of the Municipal Guard, organizational unit of the municipality C. under the name of the Municipal Guard with its seat in C., ul. [...] was liquidated, for these reasons, due to the lack of a party to the administrative proceedings, which demanded the actions of the authority due to its legal interest, the proceedings as redundant are subject to discontinuation.

Pursuant to Art. 105 § 1. of the Code of Civil Procedure when the proceedings for any reason have become redundant, in whole or in part, the public administration authority shall issue a decision to discontinue the proceedings. As stated by the Supreme Administrative Court in the judgment of February 6, 2018 (file reference number II FSK 2113/16), "the procedure becomes redundant if there is a lack of at least one of the basic elements of the administrative-legal relationship (entity, subject, legal basis) in its course. ). Similarly, in the justification of the judgment of June 7, 2019 (file reference number II FSK 2113/16), the Provincial Administrative Court in Kraków indicated that " a provision means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by deciding on its substance. The irrelevance of the proceedings may result from reasons that can be divided into subjective ones, e.g. death of a party (natural person) in the course of the proceedings, which aimed at specifying rights or obligations of a strictly personal and non-hereditary nature, cessation of the legal existence of a legal person or other organizational unit that was a party to administrative proceedings, and the subject matter - when a given case has not been and is not subject to an administrative decision. "

It should be emphasized that by letter of [...]. On 08.2017, the Head of the Commune of C. informed the supervisory authority that the tasks of public order and security of citizens were carried out by the Commune Office of C., which took over these tasks after the liquidated Commune Guard. In view of the above, it should be pointed out that in administrative proceedings, procedural succession of parties is only allowed in cases concerning transferable or hereditary rights. Pursuant to Art. 30 § 4 of the Code of Civil Procedure in matters relating to transferable or hereditary rights, in the event of the transfer of rights or the death of a party in the course of the proceedings, the current parties shall be replaced by their legal successors. Thus, since the case does not concern transferable or hereditary rights and in the absence of special provisions granting the Commune of

C. the character of a party, it should be noted that the Commune Office in C. is not a successor to the party to the proceedings, i.e. the liquidated Commune Guard in C.

Bearing in mind the above, in this legal and factual state, the President of the Office for Personal Data Protection resolved as in the sentence.

The decision is final. Based on Article. 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 party has the right to lodge a complaint with the Provincial Administrative Court against this decision, 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.

2019-10-04