

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

of December

2019

## DECISION

ZKE.440.94.2019

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) in connection with joke. 160 sec. 1 and 2 of the Act of 10 May 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 May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2) Ms RT and Mr JT, Ms AK's personal data in the video monitoring system, President of the Office for Personal Data Protection, 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 AK (hereinafter: the Complaining are directed to the property of Ms AK

Mrs. A.K. in the content of the complaint, she requested:

- 1) ordering the zone of home monitoring to be limited only to the property boundaries of Mrs. R. T. and Mr. J. T.,
- 2) deletion of personal data in the form of video recordings from monitoring, on which the image of the complainant and her family was crowned,
- 3) inspection at the place where personal data is obtained and stored, i.e. at the house belonging to Mrs. R. T. and Mr. J. T.,
- 4) hearing as a witness in the course of the inspection, Ms A. K., Ms N. K. and Mr D. K., regarding the processing by Ms R. T. and Mr. J. T. of the personal data of the complainant and her family,
- 5) application to the Municipal Police Headquarters in T. to determine the scope of data provided by Mrs. R. T. and Mr. J. T.

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

1. The monitoring system used by Ms R. T. and Mr. J. T. is aimed at ensuring the safety of both you and their closest family, because, as they both explained, there is a justified fear of danger to their life and health. The installation of the monitoring was preceded by the suggestion of the Police in connection with numerous incidents that took place on the plot of Mr. and Mrs. T.
2. The surveillance of video cameras does not extend at least partially to the space occupied by the applicant.
3. The monitoring system is handled personally by Mr. and Mrs. T.
4. The monitoring system records only the images from the cameras covering the entrance to their property and a part of the road lane before entering the property.
5. The monitoring system records camera recordings on the hard disk, and when the disk is full, the image is automatically overwritten with a new image.
6. Ms RT and Mr. JT provided, at the request of the Municipal Police, a CD with a recording of a picture of the entrance to their property and a part of the road lane before entering the property, illustrating the logging and removal of trees belonging to the City Office of T. The data on this event was automatically removed from monitoring system by Mr. and Mrs. T. by overwriting them with another image.
7. The data of the complainant and her family are currently not processed in the monitoring system of Ms R. T. and Mr. J. T.
8. The explanations of the Municipal Police Commander in T. confirmed that the recording from the monitoring of Mr. and Mrs. T. was transferred on a CD by Mr. J. T. not to the City Police Headquarters in T. but to the City Police in T. at its request. The recording of the image from the cameras covered the entrance to the property of Mr. and Mrs. T. and a part of the road lane from before the entrance to the property, on which there was an unauthorized cut willow. It was a video-only recording with no audio recording.
9. Currently, the CD with the case files is in the District Court in T.

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 Act of August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure) and on the basis of the Regulation 2016/679 (in the scope determining the legality of the processing of personal data).

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., EI / 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 ”.

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).

The President of the Office for Personal Data Protection in the scope of the processing of the complainant's personal data did not find any irregularities, as the complainant's allegations regarding the processing of her and her family's personal data by Ms RT and Mr JT by acquiring and recording in the monitoring system the image from cameras directed at the property were not confirmed Ms AK Findings showed that no camera recordings of the images of the abovementioned people.

The evidence gathered in this case shows that during the conducted administrative proceedings the camera was not and is not directed at the applicant's property. Ms R. T. and Mr. J. T. do not collect any recordings that preserve the image covering the applicant's property.

In the opinion of the President of the Office for Personal Data Protection, Mr. and Mrs. T. do not process the personal data of the complainant and her family, and do not collect recordings that capture the image that reaches beyond the boundaries of their own property. The camera mounted on the property of Mr and Mrs T. fulfills the protective function of their private property, the building in which they live.

With regard to the complainant's request for the authority to "carry out an inspection at the place where personal data is obtained and stored, i.e. at the house belonging to Mrs. RT and Mr. the processing of personal data falls within the autonomous competence of the personal data protection authority, and therefore is not carried out at the request of the person concerned. Taking actions by the authority aimed at taking advantage of the above-mentioned powers is always his sovereign decision. In the present case, the personal data protection authority did not find a breach that would become a reason for initiating ex officio proceedings.

Turning to the applicant's request for evidence to be heard during the inspection as witnesses by Mrs. A. K., Mrs. N. K. and Mr. D. K., it should be noted that, in the opinion of the President of the Personal Data Protection Office, as in the case of the

inspection, the questioning as part of this inspection was performed by the abovementioned persons fall within the autonomous competence of the personal data protection authority, and therefore it is not carried out at the request of the person concerned.

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 in the discussed case there was no confirmation of the processing of the complainant's personal data by recording from a monitoring camera directed at the property of the complainant, Ms RT and Mr. JT do not process the personal data of the complainant and her family, do not collect recordings that capture their images and the image of the complainant's property. In this situation, these proceedings are subject to discontinuation pursuant to Art. 105 § 1 of the Code of Civil Procedure against its objectlessness. "The definition of Art. 105 § 1 of the Code of Civil Procedure "proceeding for any reason has become redundant" because it includes situations where a party's request is out of date or has expired by operation of law. The proceeding in the case is groundless 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 "(Judgment of the Provincial Administrative Court in Kraków of January 30, 2019, I SA / Kr 1289 / 18, LEX no.2622023). Due to the fact that in the discussed case, the processing of the complainant's personal data by recording from a surveillance camera directed at the complainant's premises was not confirmed, Ms RT and Mr JT do not process the complainant's and her family's personal data, and do not collect recordings that capture their images and images the applicant's property, these proceedings should be discontinued.

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.

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