THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

April

2020

DECISION

ZKE.440.5.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256), art. 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) in connection with Art. 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) in connection with Art. 6 sec. 1 lit. a), b) and f) 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 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, p. 2), in connection with Art. 105a paragraph. 1 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2018, item 2187, as amended), after conducting administrative proceedings regarding the complaint of Mr. AS about disclosure of his personal data to persons not authorized by BSA, President of the Personal Data Protection Office

refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly: Inspector General for Personal Data Protection) received a complaint from Mr. A. S. (hereinafter referred to as: "Complainants") about disclosure of his personal data to persons unauthorized by B.S.A. (hereinafter referred to as: "the Bank"). In the content of the complaint, the Complainant pointed out that in connection with the application for a cash loan he had submitted, employees of the Bank, verifying the truthfulness of the employment certificate submitted by him, appeared at the Complainant's workplace, where they unlawfully disclosed bank secret information to third parties, including in particular, information about the complainant's financial obligations and the fact of applying for a loan. The complainant further accused the Bank's employees of exceeding their powers in that the real reason for the visit at his workplace was the fact that his wife was employed by the said Bank.

In view of the above, the Complainant requested the supervisory authority to examine the compliance of the Bank's activities with the provisions on the protection of personal data.

In order to establish the factual circumstances relevant to the resolution of this case, the President of the Personal Data Protection Office initiated administrative proceedings. On the basis of the evidence collected in the case, he established the following facts:

The Bank obtained the Complainant's personal data in connection with the following agreements concluded with him: Agreements [...] of [...] September 2007, as amended on [...] February 2009 by adding the co-owner - Mrs. MS, Agreement [... ] of […] April 2009 and Account Agreements […] of […] December 2013

The complainant's personal data was obtained pursuant to art. 23 sec. 1 points 2 and 3 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2002, No. 101, item 926, as amended), in order for the Bank to take the necessary actions related to the conclusion and execution of agreements, fulfillment of the Bank's justified needs resulting from the provisions of law and marketing activities related to its own products.

The scope of personal data obtained from the Complainant included: name, surname, date of birth, PESEL number, father's name, mother's name, mother's maiden name, series and number of an identity document, telephone number, residential address, correspondence address and citizenship.

On […] April 2013, the Complainant applied to the Bank for an express loan in the amount of PLN […]. In this way, the Bank additionally obtained the complainant's personal data necessary for the assessment of creditworthiness and credit risk analysis in the following areas: place of employment, position held, length of service, profession, date of employment, period of employment, marital status and education.

On the same day, married to the Complainant, Ms M. S., employed at a branch of [...] Bank [...] S.A. provided the Bank's Branch with a certificate of employment and the amount of the complainant's earnings. Via the official e-mail of the above-mentioned asked Ms B. K., Customer Service and Operational Affairs Manager of the Bank's [...] Branch, to verify the certificate as soon as possible, in order to enable further processing of the loan application.

In accordance with the provisions of the "Business Instruction [...]" No. [...] of [...] of 04.2013, binding for the Bank's employees, in the case of loans up to PLN [...] (...) when it is not possible to obtain a landline telephone number to the applicant's employer / applicant's company (...) The manager could decide to verify under the mobile phone number, after meeting the following

conditions: 1) obtaining the applicant's employer's mobile phone number / applicant's company from an independent source, by contacting the telecommunications operator's office, 2) visiting of the company's headquarters and preparation of a visit note in accordance with the template constituting Annex 8 to this Instruction, 3) positive assessment of the company's credibility based on the result of the visit (§ 107 section 2 of the instructions).

On [...] April 2013, employees of the Bank's Branch [...], Ms B. K., acting as The Customer Service and Operations Manager and Mrs. E. S., the Branch Director, made an unsuccessful attempt to establish a landline telephone number for the Complainant's employer. Then, bearing in mind that the accounts maintained by the Bank for the Complainant were inactive, in accordance with the applicable internal instructions, they verified the employer's telephone number via a mobile phone number obtained through TP SA, i.e. [...] and were made personally to the seat of the company where the Complainant was employed. During the visit to the premises occupied by the Complainant's employer - C. - the above-mentioned explained to the people present on the spot the purpose of the activities, which was only to verify the credibility of the company's existence, and not to verify the personal data of Mr. AS. field activities carried out.

On [...] May 2013, the complainant submitted to the Bank and the Polish Financial Supervision Authority a complaint against the behavior of the Bank's employees who, in connection with their professional duties, disclosed, in his opinion, to third parties (i.e. the complainant's employer and associates) information constituting banking secrecy , including: information about the Complainant's financial liabilities and the fact of applying for a loan - which constituted a violation of the right to privacy.

In connection with the complaint, an internal investigation was conducted at the Bank. In its course, no irregularities were found in the conduct of the Bank's employees, and in particular, it was not found that they provided unauthorized persons with any information about the Complainant subject to legal protection.

Currently, the Bank processes the Complainant's personal data in the following areas: name, surname, date of birth, parents' names, PESEL number, series and number of an identity document, address of residence, correspondence address, citizenship, gender and telephone number, resulting from active contracts concluded therein: [...] for the account number [...], [...] for the account number [...], [...] for the account number [...], [...] for the account number [...], contract [...] for the account number [...] , the contract [...] for the account number [...], which the Complainant is jointly owned, and the contract [...] number [...]. With regard to the above-mentioned contracts, the Bank processes the complainant's personal data pursuant to art. 6 sec. 1 lit. b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 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 (hereinafter "Regulation 2016 / 679 ") in order to perform contracts to which the Complainant is a party. Moreover, pursuant to Art. 6 sec. 1 lit. a) of Regulation 2016/679, based on the consent granted by the Complainant, the Bank processes its data for the purpose of marketing products and services of entities cooperating with the Bank.

With regard to previously concluded contracts that have expired or have been terminated by the parties, the Bank processes the Complainant's personal data pursuant to Art. 6 sec. 1 lit. f) Regulation 2016/679 in connection with art. 118 and art. 4421 and 731 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2019, item 1145, as amended) in order to pursue and defend against possible claims of the Complainant and in connection with Art. 105a paragraph. 5 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2018, item 2187 as amended), for the purpose resulting from the legitimate interests of the administrator consisting in the use of internal methods and other methods and models referred to in Part Three of Regulation EU No 575/2013.

In this factual state, the President of the Personal Data Protection Office (hereinafter also referred to as the "President of the Personal Data Protection Office") weighed as follows.

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 "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Personal Data Protection Act, 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 U. of 2016, item 922, as amended), hereinafter also referred to as the "1997 Act", in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256). At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on 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 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), 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). The manner of conducting proceedings in cases initiated and pending before the date of entry into force of new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which “a public administration body assesses the actual state of the case according to the date of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance ”(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071), M. Jaśkowska, A. Wróbel, Lex., El / 2012).

In the light of the provisions of Regulation 2016/679, the processing of personal data is lawful when any of the conditions listed in art. 6 sec. 1 of the Regulation 2016/679 (equivalent to Article 23 (1) of the 1997 Act in force until 25 May 2018), i.e. when:

a) the data subject has consented to the processing of his personal data for one or more specific purposes (similarly in Article 23 (1) (1) of the Act of 1997;

b) processing is necessary for the performance of a contract to which the data subject is party, or to take steps at the request of the data subject prior to entering into a contract (similarly in Article 23 (1) (3) of the Act 1997);

c) processing is necessary to fulfill the legal obligation incumbent on the controller (similarly in Art. 23 (1) (2) of the Act 1997);

d) processing is necessary to protect the vital interests of the data subject or of another natural person;

e) processing is necessary for the performance of a task carried out in the public interest or as part of the exercise of public authority entrusted to the administrator (by analogy in Article 23 (1) (4) of the Act 1997) or finally;

f) processing is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular, when the data subject is a child (by analogy in Article 23 (1) (5) of the Act 1997).

These conditions apply to all forms of data processing, including their disclosure. These conditions are also equal to each other, which means that for the legality of the data processing process, it is sufficient to meet one of them.

Referring to the subject matter of this case, it should be clarified that the legal act containing detailed regulations regarding the processing of personal data of bank customers is primarily the Act of August 29, 1997 - Banking Law (Journal of Laws of 2019,

item 2357) , hereinafter referred to as: "Banking Law".

Pursuant to the wording of Art. 105a paragraph. 1 above of a legal act, processing by banks (...) of information constituting banking secrecy and information provided by loan institutions and entities referred to in Art. 59d of the Act of 12 May 2011 on consumer credit, with regard to natural persons, may be performed, subject to Art. 104, art. 105 and art. 106-106d, for the purpose of creditworthiness assessment and credit risk analysis.

At the same time, pursuant to Art. 70 of the Banking Law, the bank makes granting a loan conditional on the borrower's creditworthiness. Creditworthiness is understood as the ability to repay the loan taken together with interest within the time limits specified in the contract. At the request of the bank, the borrower is obliged to submit documents and information necessary to assess this capacity (section 1). The borrower is also obliged to enable the bank to undertake activities related to the assessment of the financial and economic situation and to control the use and repayment of the loan (section 3).

Obtaining the information referred to in the above-mentioned legal provisions is to serve the purpose of fulfilling by banks, as institutions of public trust, their statutory obligations related to the necessity to exercise special care in ensuring the safety of stored funds, as well as the necessity to properly examine the creditworthiness from which the existence of the bank makes granting a loan conditional. Creditworthiness testing, which includes the ability to repay obligations and creditworthiness, is an extremely important element of the bank's operations, aimed at reducing the risk of granting difficult loans.

Importantly, especially with regard to the allegations raised by the Complainant regarding the alleged unauthorized disclosure of his personal data constituting banking secrecy, pursuant to Art. 104 sec. 1 of the Banking Law, the bank, its employees and the persons through which the bank performs banking activities are obliged to maintain banking secrecy, which includes all information regarding banking activities obtained during negotiations, during the conclusion and performance of an agreement under which the bank carries out this action. Thus, banking secrecy covers information that consists of messages concerning both banking activities and messages concerning the person who is a party to the agreement. The introduction of the cited regulation into the domestic legal order means that the Bank's employees, in the event of disclosure of the Complainant's personal data during the visit, could bear disciplinary liability on this account, and the Bank - in the event that the unauthorized disclosure of the Complainant's data would result in damage to the Complainant's side - liability for damages.

Referring the above considerations to the material circumstances of the case established in the course of the proceedings, it should be noted that the Bank obtained the complainant's personal data in connection with the conclusion of bank account

agreements. Thus, the basis for the processing of the Complainant's data by the Bank on the date of filing the complaint, Art. 23 sec. 1 point 2 and 3 of the previously applicable Act of August 29, 1997 on the protection of personal data. The Bank processed data on the basis of the provisions of the law, demonstrating the necessity of processing to perform contracts to which the Complainant was a party and fulfillment of the legal obligation incumbent on the administrator.

At present, however, the Bank processes the complainant's personal data resulting from active contracts concluded with him, pursuant to Art. 6 sec. 1 lit. a) and lit. b) of Regulation 2016/679, which has already been extensively discussed in the part of the justification devoted to the factual findings in the case. With regard to contracts that expired or have been terminated as at the date of the decision in question, the Bank processes the Complainant's personal data pursuant to Art. 6 sec. 1 lit. f) Regulation 2016/679 in connection with art. 118 and art. 4421 and 731 of the Act of 23 April 1964 Civil Code, in order to investigate and defend against possible claims of the Complainant and in connection with Art. 105a paragraph. 5 of the Banking Law, for the purposes resulting from the legitimate interests of the administrator consisting in the use of internal methods and other methods and models referred to in part three of EU Regulation No 575/2013.

On the other hand, referring to the allegation of disclosure of his personal data to unauthorized persons raised by the Complainant, in the opinion of the President of the Personal Data Protection Office, there is no clear and indisputable evidence that would make the course of events he describes more probable. According to the collected evidence, the employees of the Bank, who were entrusted with the verification of the truthfulness of the employment certificate submitted by the Complainant together with the application for a cash loan, went on [...] April 2013 to the seat of the company employing the Complainant - thus proceeding in accordance with the official instruction binding for them, and in accordance with the provisions of Art. 70 of the Banking Law. Contrary to the complainant's assertions, the explanatory proceedings conducted in the present case did not give rise to the conclusion that the checking activities performed by Mr B. K. and E. S. were carried out in a manner indicating a lack of respect for the complainant's rights, in particular his right to privacy. The extensive documentation attached to the case file shows that the verification of the Complainant's workplace by the Bank's employees consisted solely in assessing the credibility of the existence of the company called C. The persons who made the visit in question, immediately before commencing the activities, informed the Complainant's associates present at the place of the reason for their arrival, which, moreover, were not disputed at any stage of the proceedings. However, it should not be concluded from the above that their actions led to the disclosure of banking secrecy, including in particular the disclosure of information about the complainant's

financial liabilities or the intention to incur further liabilities. It should be emphasized that the Complainant did not provide any evidence in order to authenticate the version of the events presented by him, did not indicate the names of alleged witnesses of the incident, did not cite the content of the conversations conducted by the Bank's employees with his superiors and associates, and finally did not provide in the course of the proceedings before the President of UODO , the monitoring recordings on which the event which is the subject of the complaint under consideration in this case was to be recorded.

The complainant's allegations were also categorically opposed by the visiting Mr. B. K. and E. S. unanimously stated that, in connection with the performance of their official duties, they had not breached banking secrecy or the Act on the Protection of Personal Data.

It should also be noted that there is no support in the evidence for the thesis that the actual reason for the visit to the applicant's workplace was the fact of employment in B.S.A. of his wife, Ms MS. On the contrary, the collected evidence, including in particular the content of the official e-mail correspondence of [...] April 2013, exchanged between Ms MS and Ms BK, indicates that the Complainant's wife personally asked her associates to verify the certificate as soon as possible on employment and the amount of earnings achieved by the Complainant. Bearing in mind that Ms M. S. should be familiar with the procedures applicable at the Bank, it should be assumed that she was well aware of the manner in which the Bank would verify the veracity of her husband's place of employment, which she should also have informed him about.

Taking into account all the above-mentioned circumstances, in the opinion of the President of the Personal Data Protection Office, the allegations made by the Complainant against the Bank in the complaint should be considered unfounded.

In connection with the findings, it should be noted that the continuation of administrative proceedings by the President of Personal Data Protection, initiated by a complaint about irregularities in the processing of the complainant's personal data by the Bank, aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act is unfounded.

According to the wording of the above-mentioned of the provision, in the event of a breach of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the lawful state, in particular: removal of deficiencies (1), supplementing, updating, rectification, disclosure or non-disclosure of personal data (2), application of additional security measures for the collected personal data (3), suspension of the transfer of personal data to a third country (4), data protection or transfer to other entities (5) or deletion of personal data (6) . From the wording of Art. 18 sec. 1 of the Act of 1997, and at the

same time from the definition of an administrative decision - as an act decisive in a ruling manner about the rights and obligations of the parties to the proceedings in the factual and legal status established and valid at the time of its issuance - it follows that the personal data protection authority does not assess past events, no continued at the time of adjudication. The decision of the President of the Personal Data Protection Office (UODO) is an instrument to restore lawfulness in the data processing process carried out at the time of issuing the decision.

Taking into account the above, it should be stated that there are no grounds for formulating the order referred to in Art. 18 sec. 1 of the Act, because the complainant's personal data are processed by the Bank in accordance with the law, and in the course of the proceedings no irregularities were revealed that could indicate the possibility of their unlawful disclosure to unauthorized persons.

Due to the above, the administrative proceedings in the present case should have been concluded with a decision refusing to grant the applicant's request.

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

Based on Article. 127 § 3 of the Code of Administrative Procedure, 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, he has the right to lodge a complaint against the decision to the Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party, via the President of the Office for Personal Data Protection (address: ul. Stawki 2, 00-193 Warsaw). However, due to the state of epidemic in force on the date of the decision, pursuant to Art. 15zzr paragraph. 1 point 1 of the Act of March 2, 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374, as amended), these time limits do not start running at present; they will start to run on the day following the last day of the epidemic or immediately following any possible epidemic threat.

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.

2021-03-12