

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

June

2019

DECISION

ZSOŚS.440.33.2019

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, hereinafter: the Code of Administrative Procedure) and Art. 12 point 2, art. 22, art. 23 sec. 1 point 2 and point 5 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended, hereinafter: the Personal Data Protection Act) in connection with Art. 100 sec. 1 and 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), after conducting administrative proceedings regarding the complaint of Mr. P. C., res. in W. for the processing of his personal data collected in the course of the investigation in the case of a traffic violation, by the Municipal Guard in K., the Municipal Guard of the City of S. and the Municipal Guard in W.,

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection (now: the Office for Personal Data Protection) received a complaint from Mr. PC, hereinafter also referred to as the "Complainant", about the processing of his personal data, i.e. the address of residence in the proceedings for misdemeanor by the Commune Office in K., Municipal Police in W. and Municipal Police of S.

It should be noted here that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data, i.e. May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. According to Art. 100 sec. 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime, proceedings conducted by the President of the Office for Personal Data Protection, initiated and not completed before the date of entry into force of this Act (i.e. before February 6, 2019.) 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 in accordance with the principles set out in the Code of Administrative Procedure (hereinafter: the Code of Administrative Procedure).

Therefore, all activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In the course of the proceedings initiated by the complaint, the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

In a letter of [...] March 2014, the complainant reported to the President of the Office that the Municipal Guard in W., the Municipal Guard in S. and the Municipal Guard in K. had obtained his personal data in the form of a private address of residence and deliberately sent correspondence to that address in connection with offenses committed by the employees of [...] Bank Polska SA, in which the Complainant was the President of the Management Board. He explained that the potential committing of an offense against order and safety in communication by the user of one of the vehicles leased by the Bank and the demand by authorized authorities of information about who was the user of the vehicle at the time of the offense always resulted in the Bank giving a precise answer in this regard. Such action is the responsibility of one of the Bank's organizational units. He also indicated that failure to obtain the expected information by the municipal / city guard should each time result in a new request for information directly from the Bank's Management Board, to the address of the seat, as disclosed in the National Court Register. Mr. P. C. pointed out that his residence address was not entered in the National Court Register and had been obtained illegally. As a result, in the Complainant's opinion, the above-mentioned entities had no grounds to send correspondence regarding the Bank to its address, which is not disclosed in publicly available sources.

By letters of [...] August 2014, the Inspector General for Personal Data Protection turned to the Commander of the City Guard in S., the Commander of the City Guard in W. and the Commander of the Municipal Guard in K. to respond to the content of the complaint and submit written explanations, enclosing a copy of the complaint.

In the explanations submitted to the Inspector General for Personal Data Protection, the Commander of the Municipal Police in W., responding to the content of the complaint of Mr. P. 44 h of paragraph 1. 1 point 2 of the Act of April 10, 1974 on the population records and identity cards (Journal of Laws of 2006, item 139, as amended, hereinafter: the Act on population records and identity cards), and the legal basis for the processing of personal data obtained from the collection: "Central

Register of Vehicles and Drivers" is Art. 80c of paragraph 1. 1 point 10a and 100c of paragraph 1. 1 point 8a of the Road Traffic Act of June 20, 1997 (Journal of Laws of 2012, item 1137, as amended). He also indicated that in the course of explanatory proceedings in connection with the disclosure of the offense consisting in parking the vehicle of the F brand, registration number [...] at a distance less than 10 m from the intersection, it was found that the user of the vehicle was [...] Bank Polska S.A. He emphasized that the Municipal Police in W. asked in writing to the address of the above-mentioned entity to indicate the person who was entrusted with driving or using the above-mentioned car during the period in which the indicated offense was found, but the calls remained unanswered. As a consequence, she turned directly to the residence address of Mr. P. C. as the manager of the entity to which the vehicle belongs, in order to provide relevant explanations. In a letter of [...] August 2014, the Commander of the Commune Guard in K. informed that the complainant's data had been obtained pursuant to Art. 44 h of paragraph 1. 1 and 5 of the Act on Population and ID Cards, in the scope of: PESEL number, surname, first name, family name, father's name, mother's name, mother's family name, place of birth, address, series and number of ID card. He submitted that the Municipal Guard in K. turned to [...] Bank Polska S.A. for an indication of who has been entrusted with the vehicle owned by the above-mentioned entity to drive or use at a given time. He emphasized that, in the absence of a reply, the Municipal Guard in K., having previously obtained personal data, asked the Complainant, as the legal representative of [...] Bank Polska SA, to indicate who was entrusted with the vehicle owned by the above-mentioned entity for driving or timeshare use.

As it was established, [...] September 2015, the Commune Council in K. adopted a resolution No. [...] on the dissolution of the Commune Guard in K. with effect on [...] December 2015.

On the other hand, the Commander of the City Guard of the City of S., in a letter of [...] August 2014, explained that in connection with the committing of a traffic offense, the Municipal Police in S. turned to the owner of the vehicle - Bank Polska S.A. with a request for information about the user of the vehicle who committed the offense. He pointed out that [...] Bank Polska S.A. did not react to the call of the Municipal Police of the City of S., therefore he sent the call to the address of the applicant's place of residence, as the manager of the entity to which the vehicle belongs, in order to provide relevant explanations. In the opinion of the Commandant of the City Guard in S. 23 sec. 1 point 2 of the Act on the Protection of Personal Data and the relevant decision and agreement.

By letters of [...] November 2015, the complainant, the Commander of the Municipal Police of S., the Commander of the

Municipal Guard in W. and the Commander of the Municipal Guard in K. were informed that an administrative decision would be issued on the basis of the collected evidence. The parties were informed that within 7 days of the delivery of this letter to them, they have the opportunity to comment on the collected evidence and materials as well as on the demands made. Until the date of this decision, neither party responded to the collected evidence.

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

In the present case, the subject of the complaint was the allegation of unlawful acquisition and processing of the complainant's address, in a situation where this address is not disclosed in publicly available registers. These data were obtained in connection with the conducted misconduct proceedings.

First of all, it should be emphasized that the Act on the Protection of Personal Data of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Act", creates legal grounds for applying state protection in situations of unlawful processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, assessing the status of the case and sub-consumption, determines whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in art. 23 sec. 1 above of the Act on the Protection of Personal Data and depending on the findings in the case, either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuance of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing. Pursuant to Art. 1 of the aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, as referred to in Art. 7 point 2 of the cited act, it is admissible only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time. Personal data is understood as any information relating to an identified or identifiable natural person (Article 6 (1) of the Act). Pursuant to Art. 3 sec. 1 above the Act applies to state bodies, local self-government bodies and to state and municipal organizational units. For this reason, it is obliged, inter alia, to comply with its provisions municipal guard. At the same time, the principle of legality should be in sight (Article 26 (1) (1) of the Act), according to which the data controller

processing the data should exercise special care to protect the interests of the data subjects, and in particular is obliged to ensure that such data were processed in accordance with the law. In addition, the administrator of personal data should process them for specified lawful purposes and not subject them to further processing inconsistent with these purposes (Article 26 (1) (2) of the Act). In the opinion of the President of the Personal Data Protection Office, in the discussed case, the above-mentioned conditions have been met.

First of all, it should be noted that, according to the resolution No. [...] of the Commune Council in K. of [...] September 2015, the Commune Council dissolved the Commune Guard in K. with effect on [...] December 2015. Moreover, it was established that the dissolved Guard did not have a legal successor, and the documentation related to its activities was archived by the Commune in K.

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, respectively, in whole or in part.

The doctrine indicates that "the objectivity of the administrative procedure" referred to in Art. 105 §1 of the Code of Civil Procedure, means the lack of any of the elements of the material-legal relationship resulting in the fact that it is impossible to settle the matter by deciding on its substance. The discontinuation of administrative proceedings is a formal ruling that ends the proceedings, without a substantive decision (judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, II OSK 1393/09). The determination by the public authority of the existence of the condition referred to in Art. 105 §1 of the Code of Administrative Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the case. .

Considering the fact that the Commune Guard in K. was dissolved, in view of the pointlessness of the proceedings - the lack of an entity against whose actions a complaint was brought, it had to be resolved as in the introduction.

Moreover, the provision of Art. 78 sec. 4 of the Road Traffic Act of June 20, 1997 (Journal of Laws of 2018, item 1990, as amended, hereinafter: Road Traffic Law), pursuant to which the owner or holder of the vehicle is obliged to indicate upon request to the authorized body to whom the vehicle was entrusted to drive or use the timeshare, unless the vehicle was used against its will and knowledge by an unknown person, which it could not prevent. Moreover, pursuant to paragraph 5 when the

owner or holder of the vehicle is a legal person - to provide the information referred to in paragraph 4, a person designated by the authority authorized to represent the entity externally is obliged, and in the case of failure to designate such a person - persons belonging to this authority in accordance with the request of the authority referred to in para. 4, and the manner of representation of the entity.

In the light of the above regulations, both the Municipal Police in W. and the Municipal Police in S. were entitled to obtain data about the vehicle user in connection with the offense. This is also indicated by Art. 10 (1) of the Act on Municipal Guards, pursuant to which the guard performs tasks in the field of public order protection resulting from the acts and acts of local law. Pursuant to Art. 10a paragraph. 1 of this Act, in order to perform statutory tasks, the guard may process personal data, with the exception of data revealing racial or ethnic origin, political views, religious or philosophical beliefs, religious, party or union affiliation, as well as data on health, genetic code, addictions or sexual life, without the knowledge and consent of the data subject, obtained: 1) as a result of the activities undertaken in the proceedings in misdemeanor cases; 2) from registers, records and files to which the fire brigade has access on the basis of separate regulations.

At this point, it should be emphasized that the Commander of the Municipal Police of S. and the Commander of the Municipal Guard in W. are data controllers, within the meaning of Art. 7 point 4 of the Act of August 29, 1997 on the protection of personal data.

[...] Bank S.A. as the owner of vehicles whose drivers violated the road traffic regulations, he had a legal obligation to provide information on the data of employees driving the vehicles in the periods in which potential offenses occurred. Correlated with this obligation was the entitlement of municipal police units to effectively demand data identifying the perpetrators of these offenses.

The evidence collected in the case clearly shows that despite the efforts of the Municipal Police in S. and the Municipal Police in W., the recipient of the summons - [...] Bank S.A. has not taken any steps to satisfy the demands of the above-mentioned authorities. As a consequence, both the City Guard in S. and the City Guard in W. addressed directly to the President of the Management Board of [...] Bank S.A. with a request to provide the necessary information in order to continue the proceedings in the case of misdemeanors. This is indicated by the documents collected in the course of the proceedings, i.e. the application of [...] April 2013 of the Municipal Police in S. to [...] Bank SA, the application of [...] May 2013 of the Municipal Police in S. To [...] Bank SA, a summons of [...] July 2013 of the Municipal Police in W. addressed to Mr. PC, a summons of [...] September

2013 of the Municipal Police in S., addressed to Mr. PC. Consequently, they obtained the applicant's residence address. The basis for data processing and their requests are the provisions of art. 44 h of paragraph 1. 1 point 2 of the Act of April 10, 1974 on population records and identity cards (Journal of Laws 2006 No. 139, item 993, as amended) and Art. 78 sec. 5 road traffic laws.

In the light of the above, the acquisition by the Municipal Police in S. and the Municipal Police in W., personal data of Mr. P. C. in the form of the address of residence had the legal basis for the above-mentioned provisions. It should be emphasized that the purpose of obtaining and processing the complainant's personal data was to identify the perpetrators of traffic violations in the proceedings conducted by the above-mentioned city guards. Therefore, the processing of Mr. P. C.'s personal data took place due to the public good, which in this context is maintaining public order and enforcing the provisions of generally applicable law.

The conducted analysis of the collected evidence proves that the Complainant's personal data were processed only in connection with the proceedings in the case of a traffic offense. It should be noted that the initiation of the procedure was justified due to the ongoing explanatory proceedings, i.e. the identification of persons driving cars from the fleet owned by [...] Bank S.A. Adopting a different view would make it impossible for city guards to perform their statutory tasks.

As a result of the above findings and considerations, the authority concluded that there was no breach of the provisions on the protection of personal data. Both the Municipal Guard of the City of S. and the Municipal Guard in W., fulfilling the legal obligation resulting from the provisions of the Act on Municipal Guards, collected and processed the complainant's personal data in a proper and adequate manner. Therefore, in the present case, there was no breach of personal data from the outset, which made the proceedings in their entirety devoid of purpose.

For the above reasons, the President of the Personal Data Protection Office resolved as in the sentence.

Based on Article. 9 sec. 2 of the Act of 6 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), from this decision, the party has the right to lodge a complaint against the decision of the President of the Office for Personal Data Protection to Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party.

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