

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

April

2019

DECISION

ZSPU.440.803.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) in connection with joke. 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. 6 sec. 1 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 4 May 2016, p. 1 and Journal of in W. at ul. [...], for the processing of her personal data by Spółdzielnia B. - M. "M." based in W. at [...] - President of the Office for Personal Data Protection refuses to accept the request.

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Ms M. O., residing in in W. at ul. [...], hereinafter also referred to as the complainant, for the processing of her personal data by Spółdzielnia B. - M. "M." with its seat in W. at [...], hereinafter also referred to as the Cooperative.

The complainant indicated that the Cooperative was processing her personal data in connection with the conclusion and for the purposes of the implementation of the "Purchase and Sale Agreement for real estate located at ul. [...] (...) ", and in connection with the fact that the Cooperative quoted:" (...) is a defendant in the currently operated by "Spółdzielnia Mieszkaniowa K." civil proceedings. To the files of the {court} case, the Board of the Housing Community (...) added evidence in the form of, inter alia, Of the Assignment Agreement concluded with the Community (...) ". As the complainant pointed out, the quotation: "(...) I have never (...) authorized this Entity to use my data for any purpose other than the implementation of the aforementioned contract of purchase and sale of premises no. (...) in the property located in W. ul. [...] (...) ". Moreover, the

Complainant indicated that she had received from the Cooperative a correspondence by name of [...] October 2017, of a marketing nature, in which the following text was quoted: ul. [...] for the Entrusted Board. Let me mention that the property is currently managed by the Ownership Management, and the management contract was terminated by the Cooperative in 2010 (...) ”.

In the wording of the request addressed to the President of the Office, the complainant indicated that the following quotation: "(...) I am asking for an order for Spółdzielnia M. - BM (...) to remove deficiencies in the processing of personal data by: 1) ceasing to process my personal data for a purpose other than expressed / em consent to this; deletion of my personal data from databases (...) M. used for marketing or commercial purposes as well as all others regarding the processing of my personal data I have not consented (...) ". In a letter sent to the local office of [...] February 2019, the complainant indicated that the quotation: "(...) I am not currently receiving any correspondence by name with (...) M. At the same time, I would like to explain that my personal data, as well as other owners flats (including those who bought flats on the secondary market) (...) M. did not know before. They were submitted to the District Court in documents (eg assignment agreement), and these documents were received by (...) M. from the court (...) ”.

On the basis of the evidence gathered in the present case, the following factual state was established.

In 2009, the complainant signed a purchase and sale agreement for the real estate located at ul. [...] with the B. M. "M." Cooperative. Moreover, on [...] May 2015 the applicant concluded an agreement with the Housing Community in W. at ul. [...] an assignment agreement, which shows that she is the owner of a flat no. (...) under a donation agreement - notarial deed (no....) of [...] April 2011.

As indicated by the Cooperative in the explanations sent on (...) January 2019 (sign: ...) quotation: "(...) the Cooperative does not process the data of Mrs. MO in any way, and the letter regarding the management of the common property was addressed to the owners of the premises in building K. in connection with pending court proceedings. The data of the complainant (...) were taken from the land and mortgage register no. (...) Kept for premises no. (...) And from the files of court proceedings (...) ”.

To supplement the explanations, the Cooperative in a letter of (...) February 2019 (ref .: ...) indicated the quotation: "(...) The Cooperative has only the complainant's data contained in the assignment agreement of (...) .05.2015 (...) between the complainant and the K. Housing Community, which the Cooperative received in connection with the pending proceedings, ref.

no. acts (...), before the District Court (...) Civil Division in W. (...) the letter regarding the management of the common property was addressed to the owners of premises in building K. in connection with the pending proceedings, because in the opinion of the Cooperative, the claims covered by the lawsuit resulted from: in. from improper exploitation of the building K. ”.

In the letter of (...) October 2017 addressed to the complainant, ref. (...), the Cooperative, relying on the agreement to establish separate ownership of the apartment and the previous course of the management of the common property, sent the complainant a marketing offer along with a questionnaire.

The Housing Community at ul. [...] in W., hereinafter also referred to as the Housing Community, filed to the District Court in W. (...) Civil Division "Action for payment in writ proceedings" against the Cooperative. The above-mentioned statement of claim was accompanied by documentation on the relationship between the Housing Community and the Cooperative, serving to substantiate the claim and including, in particular, the complainant's personal data as a member of the Housing Community. In view of the above, the Cooperative processes the complainant's personal data for the purposes related to the above-mentioned court proceedings and to the extent to which these data have been recorded in the files of these proceedings (file reference: ...).

Currently, the Cooperative processes the complainant's personal data only for the purposes related to court proceedings. In a letter of (...) February 2019 (reference number: ...), the Cooperative indicated that the quotation: "(...) These data are currently not processed in any other way, and are not processed for marketing purposes. After the court proceedings in question have been legally concluded, the data of the buyers of the premises will be deleted from the set of the Cooperative's contractors. A copy of the assignment agreement was sent to the Cooperative by the court conducting the proceedings, together with a copy of the lawsuit ”. The complainant in the correspondence of (...) February 2019 indicated that the quotation: "(...) I am not currently receiving any correspondence by name with (...) M. At the same time, I would like to explain that my personal data and other apartment owners (including those who bought flats on the secondary market) (...) M. did not know before. They were submitted to the District Court in documents (eg assignment agreement), and these documents were received by (...) M. from the court (...) ”.

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

At the outset, it should be noted that on May 25, 2018, with the entry into force of the Act of May 10, 2018 on the protection of

personal data (Journal of Laws of 2018, item 1000, as amended), the General Office The Personal Data Protection Inspector has become 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, as amended), hereinafter referred to as the Administrative Procedure Code. All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1) - 3 of the Act of May 10, 2018 on the protection of personal data).

It should be emphasized that under the applicable provisions, the processing of personal data is lawful when the data controller has at least one of the provisions set out in art. 6 sec. 1 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 / EC (Journal UE L 119 of May 4, 2016, p. 1 and EU Official Journal L 127 of May 23, 2018, p. 2), hereinafter referred to as the GDPR, of the material premises for the processing of personal data. According to the above-mentioned of the provision, the processing of personal data is lawful only if one of the following conditions is met: a) the data subject has consented to the processing of his personal data for one or more specific purposes; b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; 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 in the exercise of official authority vested in the controller; f) processing is necessary for the purposes of the legitimate interests pursued by the controller 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.

Pursuant to Art. 57 sec. 1 GDPR, without prejudice to other tasks under this Regulation, each supervisory authority on its territory shall monitor and enforce the application of this Regulation (point a) and handle complaints brought by the data subject or by an entity, organization or association pursuant to 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).

In the light of the factual findings adopted in the present case, it is undisputed that the Cooperative sent the complainant a correspondence of (...) October 2017, under which it offered her services in the area of management of a common property.

Due to the personal nature of the above-mentioned parcels, this action was undoubtedly related to the processing of the complainant's personal data in terms of her name, surname and address. However, it did not meet any of the conditions set out in Art. 6 sec. 1 GDPR. As is clear from the files of these proceedings, on (...) May 2015, the applicant concluded an assignment agreement with the Housing Community, under which it follows that, due to the donation agreement of (...) April 2011, she became the owner of the flat no. (...) located in W. at ul. [...] Moreover, the complainant did not consent to the Cooperative sending offers in the form of personal correspondence. Also the argument raised by the Cooperative that the letter in question, of a marketing nature, was sent with the following quotation: "(...) in connection with the pending court proceedings, because in the opinion of the Cooperative, the claims covered by the lawsuit resulted, among others, from from improper exploitation of the building K. " is not reflected in the collected evidence. The offer of (...) October 2017 did not refer to the claim for payment in the writ proceedings, because the content of the above-mentioned of the letter is solely of a marketing nature, it relates to the technical offer of the building and its management. Therefore, there are no grounds to believe that the Cooperative acted within the law by sending a marketing offer to the complainant. The Cooperative also failed to demonstrate that sending the letter of (...) October 2017 to the Complainant was necessary for the performance of another contract to which the Complainant and the Cooperative are parties, or that it was necessary for the Cooperative to fulfill any legal obligation incumbent on it, due to the necessity to perform a task carried out in the public interest or as part of the exercise of public authority entrusted to it. The questioned use of the complainant's personal data for the purposes of sending her an offer from (...) October 2017 cannot be considered necessary in the context of legitimate interests pursued by the Cooperative or by a third party, and overriding the fundamental rights and freedoms of the complainant, requiring protection her personal data. Therefore, there are no legal grounds to recognize that the Cooperative, by sending a marketing letter to the complainant, fulfilled any premise legalizing the processing of her personal data in accordance with art. 6 sec. 1 GDPR.

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 ". In view of the above, it should be pointed out that at present the Cooperative does not process the complainant's personal data in the manner questioned by her in the complaint. Currently, the Cooperative is processing the complainant's personal data only for the purposes of the pending court proceedings brought by the Housing Community. Moreover, the Cooperative does not process the complainant's personal data for any other purpose, in particular for marketing purposes.

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. 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.

2019-04-30