

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 17

May

2019

DECISION

ZSPU.440.156.2019

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 160 sec. 1 and 2 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) in connection with joke. 12 point 2, 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 f) and Art. 6 sec. 1 lit. c) and f) and art. 28 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 (general regulation on the protection of data) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2) after conducting administrative proceedings regarding the complaint of Mrs. in G., regarding irregularities in the processing of her personal data by Ms G. A. as an entity running a business under the name of G. based in G. and by a Housing Association S. based in G., 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. G. in G., hereinafter referred to as the Complainant, concerning irregularities in the processing of her personal data by Ms GA as an entity running a business under the name of G. based in G., hereinafter referred to as the Administrator, and by the Housing Association S. with its seat in G., hereinafter referred to as further Community. In the content of the above-mentioned of the complaint, in particular, the complainant raised the following quotation: "(...) W. does not have any powers to entrust us with the processing of our personal data, it is not known who distributes the annexes, or has authorization to process personal data from the Community (...)". The complainant also questioned the processing of her personal data by the dismissed members of the Community Management Board in the persons of Mr. BC and Mr. AC. publicly

available data on my alleged indebtedness (...) ". Subsequently, in a letter of [...] June 2014, addressed to the authority, the complainant alleged that the Community Management Board disclosed the following data: "(...) to W., which discloses its personal data without any authorization to companies, as well as GR (...) ". in a letter of [...] June 2014. The complainant also added the following quotation: "(...) in the minutes of the annual meetings of the Housing Community on [...] March 2014, personal data in the form of defamation are processed without my consent, which are to W. and other entities (...) ". In another letter of [...] August 2014, addressed to the authority, the Complainant alleged that the Community Management had disclosed her data to Ms MW. In a letter of [...] December 2014, the complainant indicated that the water meters were read by an unknown person on behalf of the Administrator, cited .: "(...) as I found out, this woman did not have any authorization from the Management Board of the S. Housing Community in G. She also did not show any authorization from the W. company (...) ". In a letter of [...] July 2015, the complainant quoted: "(...) a new person was hired to read water meters in Community housing (...) VF, who had a list of protected personal data for which she did not have no legal rights (...) ". To sum up, in a letter of [...] August 2017 addressed to the authority, the complainant repeated her position presented in the course of the proceedings in this case and indicated the following quotation: "(...) the Management Board of the Housing Community S. in G. continues to provide my data as and other members of the Community, more and more new people - under the banner of W. without the resolutions of the owners of the premises (...). The Community Board (...) concluded an agreement with the company W., which did not contain any provisions regarding the processing of members' and mine data, there is no protection of the data against their disclosure, removal, destruction, damage, no records of persons authorized to process them are kept. (...). People who distribute correspondence have not been authorized to process my personal data and are not protected in any way. (...). And so I present as evidence the contract concluded by the Board of the Housing Community without the resolution of the owners and annexes issued to me by a completely unknown person, it happens with every reading of water meters, chimney sweep, electric and other inspections, where the lists contain personal data and signatures are required (...). So far unknown, I present the rent appendices issued by M. M., who reads M. W. water meters not only arrogant, but still has all personal data without authorization (...) ".

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

The applicant is a member of the Community.

The Management Board of the Community consisted of: Mrs. H. I., Mr. B. C. and Mr. A. C. - letter of the Community of [...] December 2014 addressed to the Inspector General for Personal Data Protection (currently: President of the Personal Data Protection Office) - in the case files.

On [...] June 2009, an agreement for an indefinite period of time for the management of the property of the Community - the contract on file - was concluded between the Community and the Administrator.

On [...] April 2010, an agreement on entrusting the processing of personal data for the purpose of administering the property of the Community was concluded between the Community and the Administrator - the agreement on the file.

Ms MH, employed by the Administrator as an accountant, was authorized to process personal data held by the Administrator in the period from [...] April 2010 to [...] December 2015 - authorization of [...] April 2010. - in the case file.

Ms MW, employed by the Administrator as a real estate administrator, was authorized to process personal data held by the Administrator in the period from [...] June 2014 to [...] December 2015 - authorization of [...] June 2014 - in the case file.

Mr. GR, employed by the Administrator as a real estate administrator, was authorized to process personal data held by the Administrator in the period from [...] November 2011 to [...] December 2015 - authorization of [...] November 2011 - in the case file.

Mrs. V. F., the manager's employee, had appropriate authorizations to process the personal data of the owners of the Community premises in the scope of the above-mentioned an agreement to entrust the processing of personal data - a letter from the Community of [...] December 2014 addressed to the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) - in the case files.

The manager did not disclose the personal data of the members of the Community to the entity performing the inspections of gas installations and chimneys - the statement of the Administrator of [...] November 2014 - in the case files.

The Community Management Board provides personal data of Community members only to the Administrator - Community letter of [...] November 2014 addressed to the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) - in the case files.

The Administrator applies appropriate organizational and technical safeguards for the processed personal data of members of the Community - the Administrator's letter of [...] March 2014 addressed to the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) - in the case files.

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). 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).

Pursuant to Art. 18 sec. 1 of the Act of August 29, 1997, the Inspector General, in the event of a breach of the provisions on the protection of personal data, ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, and in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying, disclosing or not disclosing personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data.

Pursuant to Art. 57 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 (general regulation on the protection of data) (Journal of Laws EU.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), hereinafter referred to as the GDPR, without prejudice to other tasks set out pursuant to this Regulation, each supervisory authority on its territory monitors and enforces the application of this Regulation (point a) and handles complaints lodged by the data subject or by a body, 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).

In turn, according to art. 6 sec. 1 GDPR, processing is lawful only in cases where - and to the extent that - at least one of the

following conditions is met: a) the data subject has consented to the processing of his personal data in one or more specific goals; 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 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.

Referring the above to the circumstances of the present case, it should be noted that the basis for the processing by the Administrator of the personal data of the Complainant as a member of the Community is an agreement concluded by the Administrator with the Community specifying the manner of management of the common real estate, the admissibility of which is provided for in Art. 18 sec. 1 of the Act of June 24, 1994 on the ownership of premises (Journal of Laws of 2018, item 716, as amended). According to this provision, the owners of the premises may, in the agreement on establishing separate ownership of premises or in the agreement concluded later in the form of a notarial deed, specify the manner of managing the common real estate, and in particular may entrust the management to a natural or legal person. The Community entrusted the administration of the Administrator, which, pursuant to Art. 28 GDPR has become a processor. Thus, it must be stated that the Administrator acts on behalf of the Community, and therefore the Community is the administrator of the complainant's personal data within the meaning of Art. 4 sec. 1 point 7 of the GDPR, and the Administrator is a processor within the meaning of art. 4 sec. 1 point 8 of the GDPR. It should also be added that the Community in the present case was represented by the management board in the persons of Ms H. I., Mr B. C. and Mr A. C., acting pursuant to Art. 21 sec. 1 of the Act on Ownership of Premises, pursuant to which the management board manages the affairs of the housing community and represents it outside and in relations between the community and individual owners of the premises.

On the other hand, the challenged processing of the Complainant's personal data by the Administrator's employees, in particular by Ms M. W., Mr G. R. or Ms V. F. is based on Art. 29 of the GDPR, according to which the processor and any person acting under the authority of the controller or the processor and having access to personal data process them only at the request of the controller, unless required by EU law or the law of a Member State.

On the other hand, having regard to the complainant's allegation that her personal data was inadequately secured by the Administrator, it should be stated that it was not confirmed by the evidence in the case. As it results from this material, the Administrator applies appropriate technical and organizational measures to protect the processed personal data of members of the Community.

In summary, the complainant's personal data is lawfully processed both by the Community and the Administrator. The Community processes the complainant's personal data pursuant to Art. 6 sec. 1 lit. c) and f) of the GDPR, and the Administrator, on the basis of an agreement on entrusting data processing, i.e. the agreement referred to in art. 28 GDPR. In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

Based on Article. 160 sec. 1 and 2 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) in connection with joke. 21 sec. 1 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 joke. 129 § 2 and article. 127 § 3 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), a party dissatisfied with this decision has the right to submit President of the Office for Personal Data Protection of the request for reconsideration of the case (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). If a party does not want to exercise the right to submit an application for reconsideration, it has the right, pursuant to Art. 52 § 3 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302, as amended) to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw within 30 days from the date of delivery to her side. The complaint is lodged through the President of the Personal Data Protection Office. The fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs.

2019-05-27