

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 31

May

2019

DECISION

ZSOŚS.440.29.2018

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) and art. 22 and art. 23 sec. 1 point 2 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 "Act" in connection with Art. 100 sec. 1 of the Act of December 14, 2019 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125) after administrative proceedings regarding the complaint of Ms KS (residing [...]), Mrs. OS (residing [...]), Mrs. KD (residing [...]) and Mr. SS (residing [...]), for the processing of their personal data by the Commander of the Police Station in C . (Ul. [...])

I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) [...] in May 2018 received a complaint from Ms KS (hereinafter: the Complainant) about the unlawful processing of her personal data by the Police Station in C. In the content of her complaint indicated that an officer of the Police Station in C. had unlawfully processed personal data, violating the rights of the complainant and other persons. In the opinion of the complainant, on the part of the officer, there were many cases of abuse by carrying out checks in the electronic databases of the Police without their knowledge, which resulted in a data leak. In view of the above, the complainant requested that the police station in C. remedy deficiencies in the processing of her personal data and of other persons by fulfilling the information obligation resulting from art. 25 sec. 1 of the Act and appropriate punishment of an officer of the Police Station in C. On [...] June 2018, a letter from Ms K. S. was received asking for information on the status of the case. The President of the Personal Data Protection Office called on the complainant [...] on September 2018 to supplement the formal deficiencies in the complaint. On [...] September 2018, the Personal Data Protection Office received a letter from the complainant along with a power of attorney

from Mrs. K. D., Mrs. O. S. and Mr. S. S., indicating the scope of the data to be breached. Moreover, the Complainant requested a supervisory authority to issue a decision ordering the application of additional measures securing the personal data in question and remedying the breaches. In response, the President of the Office for Personal Data Protection, in a letter of [...] September 2018, informed about the necessity to pay stamp duty on granting the power of attorney and about the conditions entitling to exemption from paying it. In response to the Office for Personal Data Protection [...] October 2018, a letter was received informing about the fulfillment of the above conditions exempting it from submitting it. In a letter of [...] October 2018, the President of the Personal Data Protection Office called on the complainant to provide additional explanations in the case. In the reply received by the Personal Data Protection Office, the complainant indicated additional circumstances. In connection with the above, the President of the Office for Personal Data Protection, in letters of [...] October 2018, called the Commander of the Police Station in C. to provide explanations in the matter. In connection with the response of the Commander of the Police Station in C., which was received by the Office for Personal Data Protection [...] on November 2018, the supervisory body turned [...] on December 2018 to the superior unit, the Municipal Police Commander in K. to provide explanations in the matter. These explanations were provided by the Municipal Police Commander in K. in a letter of [...] December 2018 and a letter of [...] February 2019. In connection with the above [...] April 2019, the President of the Office for Personal Data Protection informed the parties to the proceedings about the collection of the material and the possibility of getting acquainted with the files of the administrative proceedings, which the parties took advantage of.

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office familiarized himself with the evidence and made the following arrangements:

According to the reply given by the Commander of the Police Station in C., no letter from the complainant and persons represented by her regarding the fulfillment of the obligation under Art. 25 sec. 1 of the act was not received.

According to the reply provided by the Municipal Police Commander in K., the legal basis for the processing of the complainant's personal data and the persons represented by her was the Act of 6 April 1990 on the Police (Journal of Laws of 2016, item 1782) and the Regulation of the Minister of Affairs Internal Affairs and Administration of July 21, 2016 on the processing of information by the Police (Journal of Laws of 2016, item 1091) in the then binding version.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

At the outset, it should be noted that in accordance with Art. 100 sec. 1 of the Act of December 14, 2019 on the protection of

personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry into force of this Act, are carried out on the basis of the existing provisions. Thus, in the case at hand, the Act of August 29, 1997 on the protection of personal data applies, which defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1 of the act).

Pursuant to the wording of art. 7 point 2 of the Act, data processing should be understood as any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Each of the ones indicated in Art. 7 point 2 of the Act, the forms of personal data processing should be based on one of the prerequisites for the legality of the processing of personal data, enumerated in Art. 23 sec. 1 of the Act on the Protection of Personal Data. Due to the wording of Art. 7 of the Constitution of the Republic of Poland of April 2, 1997, according to which organs of public authority operate on the basis and within the limits of the law, the content of Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, which states that the processing of data is permissible when it is necessary to exercise the right or fulfill the obligation resulting from the law.

Thus, attention should be paid to Art. 20 paragraph 15 of the Police Act in the version in force at the time, which clearly indicated that the Police, in order to prevent or detect crimes and identify persons, may obtain, collect and process information, including personal data from collections kept on the basis of separate provisions by public authorities, and in particular from the National Criminal Register and the PESEL register, including the files in which the information, including personal data, obtained as a result of operational and reconnaissance activities performed by these authorities, is processed. Administrators of data collected in these registers are obliged to make them available free of charge.

Therefore, taking into account the content of the explanations submitted by the Municipal Police Commander in K., in particular the letter of [...] February 2019, which indicated that as a result of the log analysis, the purpose and basis for data processing were confirmed, the President of the Data Protection Office cannot conclude that the personal data of the complainant and persons represented by her in an unauthorized manner were processed in the case at hand. The collected evidence does not make it probable that the personal data of the Complainant and the persons she represents were in the possession of third parties. It should also be noted that since in the present case, pursuant to the provisions of Art. 20 paragraph 16 point 1 was recorded in the system, who, when, for what purpose and what data was obtained, and at the same time it was not probable

that unauthorized persons had access to the personal data, the President of the Personal Data Protection Office has no basis to issue a possible order to apply additional precautionary measures.

Referring to the complainant's demand to punish the Police officer, it should be noted that the President of the Personal Data Protection Office does not have the relevant powers in this respect. The complainant was informed that, in accordance with the judgment of the Supreme Administrative Court of 19 November 2001, "a person seeking protection of his / her cases under the aforementioned Act on the Protection of Personal Data is not the subject of proceedings aimed at issuing a decision on notifying a relevant authority about a data processing offense. personal data and cannot demand it from GIODO in the administrative and legal forms of this proceeding ". (reference number II SA 2702/00). Moreover, as an attachment to the complaint of [...] April 2018, it attached a letter confirming the conduct of the proceedings by the competent prosecutor's office unit.

Referring to the demand to order the fulfillment of the obligation under Art. 25 sec. 1 of the Act, it should be noted that in accordance with the wording of this provision, the controller is obliged to fulfill the obligation immediately after recording the collected data. Despite the above findings, it should be noted that pursuant to Art. 25 sec. 2 of the Act, the provisions of para. 1 shall not apply when the data is processed by state authorities, local government bodies and state and municipal organizational units on the basis of legal provisions.

As the complainant, in a letter of [...] April 2018, pointed to the violation of the rights of data subjects other than herself and the persons represented by her, it should be noted that, in accordance with the judgment of the Provincial Administrative Court in Warsaw of 9 November 2011. "If a specific person reports irregularities in the processing of personal data to the Personal Data Protection authority, this authority is competent and obliged to initiate an investigation to determine whether the complainant's personal data are actually processed, and if so, in what purpose and whether it is done in compliance with the provisions of the Personal Data Protection Act Therefore, the Personal Data Protection Authority initiates and conducts proceedings at the request of a party in accordance with the provisions of the Code of Civil Procedure. and adjudicates on the individual case of the party in the scope covered by its request. On the other hand, signaling by a party of irregularities in the processing of personal data in a scope broader than the examination of the correctness of processing of the applicant's personal data may only lead to the initiation of ex officio proceedings by the Inspector General for Personal Data Protection ". (reference number II SA / Wa 1363/11). Thus, the President of the Personal Data Protection Office issued this administrative decision at the request

of the Complainant and persons represented by her, examining the case in relation to the parties to these proceedings.

Pursuant to Art. 9 sec. 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), the decision may be appealed against by the party to 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 Personal Data Protection 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.

2019-06-03