

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

January

2020

DECISION

ZKE.440.23.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, 2019, item 1133), art. 160 sec. 1 and 2 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2019, item 1781) and art. 12 point 2, art. 22, art. 31 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended, and of 2018, item 138), Art. 28, art. 57 (1) (a) a 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 / EC (Journal EU L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. M. Ł. About irregularities in the processing of his personal data by R. Spółka Akcyjna (currently: B. Spółka Akcyjna) and D., President of the Office for Personal Data Protection refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly the Inspector General for Personal Data Protection, hereinafter referred to as: GODO) received a complaint from Mr.) and D. (hereinafter referred to as: the Company).

In the content of the complaint, the Complainant indicated the quotation "failure to exercise due care in the storage of his personal data" by the Bank and the Company and the disclosure of his personal data to persons not authorized by the Company.

The complainant asked for the quotation "deletion of personal data that was in the possession of the company D. and an explanation of what data was in the possession of persons or third parties as a result of improper delivery of the parcel containing personal data".

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office

(hereinafter: "the President of the Personal Data Protection Office") determined the following.

1. The Bank explained that it had obtained the complainant's personal data in connection with the conclusion by him of contracts for a personal account, a deposit account and three foreign currency accounts of [...] January 2011. The Bank processed the complainant's personal data pursuant to Art. 23 section 1 point 3 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922 and of 2018, item 138), hereinafter: "the 1997 Act".
2. On the basis of the entrustment agreement of [...] April 2007 (hereinafter: the agreement) between the Bank and the Company, the Bank provided the Company with the Complainant's personal data for the purpose of providing the service of delivering the credit card agreement. In the content of the complaint, the Complainant indicated that on [...] August 2014, the parcel (no. [...]) containing the above-mentioned the agreement was sent by the Bank to the complainant's home address and left, with his consent, at the point of receipt of the Company's parcels, but the quotation "was not issued to him due to the refusal to sign the documents without the possibility of reading them in advance". On [...] August 2014, the parcel was delivered again at the place of work. As the Complainant pointed out, the parcel was no longer closed with the quotation "securely but only sealed with adhesive tape", which allowed access to the documentation contained therein by unauthorized persons. The complainant again refused to accept the parcel.
3. The Bank explained that it obtained the information about the infringement from a copy of the complaint received from GIODO and immediately carried out an explanatory proceeding which confirmed the non-compliance of the Company's actions with the delivery of the parcel to the Complainant. The explanations provided by the Company in the letter of [...] August 2014 show that "our employee was negligent in the performance of the service of delivering (...) documents to the recipient of the above-mentioned shipment. As a result, the service process was not carried out in accordance with the established procedure set out in the contract between R. and D. ". In order to minimize the risk of similar violations in the future, the company retrained its employees in the procedures and instructions for delivering the Bank's parcels.
4. The explanations provided by the Company in the letter [...] of November 2014 show that the Complainant never requested the removal of his personal data.
5. The company, in a letter of [...] May 2017, again submitted explanations to the GIODO Bureau, to which the correction of the declaration submitted in 2014 was attached. Their content shows that the non-compliance with the contract of the Company's activities related to the quotation "inaccuracies regarding the date of delivery of shipments of the client R. S.A. and filling out

recipient identification forms ". The company stated that the Complainant's personal data had not been made available to unauthorized persons.

In this factual state, the President of the Personal Data Protection Office considered the following.

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 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, and of 2018, item 138), in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096) , of 2019, item 1133), hereinafter referred to as "Kpa". 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 method of conducting proceedings in cases initiated and not completed 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 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 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., EI / 2012).

In the judgment of May 7, 2008 in the case file ref. 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 on the matter and whether it is done in a lawful manner" .

At the time the event described by the applicants took place, the 1997 Act was in force. After May 25, 2018, the provisions of Regulation 2016/679 apply. The provision of fundamental importance for the assessment of the legality of the processing of personal data was Art. 23 sec. 1 of the 1997 Act (Article 6 (1) of Regulation 2016/679 respectively). Pursuant to the aforementioned provision, the processing of personal data is lawful when the data controller meets one of the conditions listed in this article, i.e. when:

the data subject has consented to it, unless it concerns the deletion of data concerning him (Article 6 (1) (a) of Regulation 2016/679, respectively),

it is necessary to exercise an entitlement or fulfill an obligation resulting from a legal provision (Article 6 (1) (c) of Regulation 2016/679, respectively),

it is necessary for the performance of the contract when the data subject is a party to it or when it is necessary to take action before concluding the contract at the request of the data subject (Article 6 (1) (b) of the Regulation 2016/679, respectively) ,

it is necessary to perform tasks specified by law for the public good (Article 6 (1) (e) of Regulation 2016/679, respectively),

it is necessary to fulfill legally justified purposes pursued by data controllers or data recipients, and the processing does not violate the rights and freedoms of the data subject (Article 6 (1) (f) of the Regulation 2016/679, respectively).

It should be added that these conditions apply to all forms of data processing listed in art. 7 sec. 2 of the 1997 Act. 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. These conditions apply to all forms of data processing listed in art. 4 point 2 of Regulation 2016/679, including in particular to make them available. 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.

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act. According to this provision, in the event of a breach of the provisions on the protection of personal data, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying, or failure to

provide 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 2016/679 "without prejudice to other tasks specified under this Regulation, each supervisory authority on its territory shall monitor and enforce the application of this Regulation and handle complaints lodged by the data subject or by an entity, 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 results of these proceedings within a reasonable time, in particular if it is necessary to pursue further investigations or coordinate actions with another supervisory authority "(letters a and f).

Referring the above to the circumstances of the present case, it should be noted that the basis for legalizing the processing of the Complainant's personal data by the Bank was Art. 23 sec. 3 of the 1997 Act. The Bank entrusted the processing of the complainant's personal data to the Company on the basis of an agreement between the Company and the Bank for the purpose and scope indicated in the agreement in accordance with Art. 31 of the 1997 Act (now Article 28 of the GDPR).

The complainant accused the Company and the Bank of the citation "failure to exercise due care in storing his personal data", which was confirmed in the evidence collected in the case. On the basis of the contract binding it with the Company, the Bank conducted an explanatory proceeding which revealed non-compliance with the procedure provided for in the contract during the delivery of the parcel to the Complainant. However, it should be noted that the identified breach of personal data protection was of a one-off nature, and currently the breach is not continued. There is no reason to assume that such an event will repeat itself in the future. In view of the above, there was no basis for issuing a decision ordering the restoration of legal status by the President of the Personal Data Protection Office, referred to in Art. 18 of the 1997 Act. It is justified to issue a decision refusing to meet the data subject's request.

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 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 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 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.

2021-03-25