

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 29

May

2019

DECISION

ZSOŚS.440.26.2019

Based on Article. 105 § 2 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 100 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), after administrative proceedings on a complaint by the Commander of the City Guard in R., for refusal providing personal data in the field of first name, last name and address of the subscriber's telephone number [...] by O. Spółka Akcyjna, with its registered office in W.,

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection (currently the President of the Office for Personal Data Protection) received a complaint from the Commander of the City Guard in R., hereinafter referred to as the "Commander", against the refusal to disclose personal data regarding the name, surname and address of the subscriber's telephone number [...] by O. SA, seated in W., hereinafter referred to as the "Company".

In the content of the above-mentioned of the complaint, the Commandant indicated that on [...] September 2015, officers of the Municipal Guard in R, in the course of their official duties, revealed an offense consisting in sticking advertisements with the text [...] by phone [...] on the safety barriers in R. without the consent of the administrator of this place, therefore an offense under Art. 63a § 1 of the Act of 20 May 1971 Code of Petty Offenses (Journal of Laws 2018, item 618). The Commandant also explained that [...] in October 2015, the Municipal Police in R. asked the telephone operator O. SA for information on personal data, i.e. name, surname and address of the subscriber of the abovementioned phone. In response from [...] February 2016, the Company refused to grant the above-mentioned information, referring to Art. 159 paragraph 4 of the Act of 16 July 2004 Telecommunications Law (Journal of Laws 2018, item 1954), which excludes the possibility of disclosing personal data covered by telecommunications confidentiality for the purposes of non-criminal proceedings.

Considering the above, the Commandant lodged a complaint with the Inspector General against the Company's failure to disclose the subscriber's [...] telephone number, which is necessary for the investigation and determination of the perpetrator of the offense.

In the course of the proceedings initiated by the above-mentioned Due to the complaint, the Inspector General for Personal Data Protection obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

In a letter of [...] December 2016, the Inspector General for Personal Data Protection informed the Commander of the initiation of proceedings in the case and asked the President of the Management Board of O. SA (hereinafter: the "President of the Management Board") to submit written explanations. On [...] December 2016, the Office of the Inspector General for Personal Data Protection received a letter from Mr. ZS, the Information Security Administrator (letter number: [...]), who, acting as a representative, explained that the Company was processing telephone [...] pursuant to the provisions of the Act of July 16, 2004. Telecommunications Law and Art. 23 sec. 1 point 2 and 3 of the Act of August 29, 1997 on the protection of personal data in order to perform the contract for the provision of telecommunications services, the implementation of statutory obligations that require the Company to store accounting documents and tax books, pursue claims and fulfill the statutory obligation to store and provide access to authorized entities information about subscribers. The submitted explanations also indicated that the Company processes the personal data of the user of the telephone number [...] in the collection of subscribers of telecommunications services of O. S.A. At the same time, the Information Security Administrator explained that on [...] February 2016, the Company received a request from the Commanding Officer to disclose the user's data to the abovementioned telephone number, but the amendment to the Act of July 16, 2004 Telecommunications Law (Journal of Laws of 2018, item 1954) by changing Art. 159 paragraph 4 excluded the possibility of sharing data and messages covered by telecommunications secrecy for the purposes of non-criminal proceedings.

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws, item 1000, as amended), on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. In addition, on February 6, 2019, 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) entered into force, which in Art. 100 specifies that the 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 conducted on the basis of the existing provisions, i.e. 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". All actions taken by the President of the Personal Data Protection Office remain effective.

In view of the content of art. 45 of the Code of Petty Offenses, according to which the punishability of an offense ceases if a year has elapsed since its commission, and if proceedings are instituted during this period, the punishment of the offense ceases with the lapse of 2 years from the commission of the offense, in a letter of [...] October 2018 (sign: [...]), the President of the Office asked whether the Commander of the City Guard upheld the demand expressed in the complaint to order an OSA sharing the above-mentioned personal data of the subscriber's telephone number [...], and if so, on what legal basis and for what purpose (the return acknowledgment of receipt is included in the case file). In the absence of a reply from the Commander of the City Guard in R. within the indicated period, it should be considered that the party does not uphold the previously expressed request.

In view of the above, the President of the Personal Data Protection Office considered the following.

In connection with the arrangements made in the course of the administrative proceedings, in particular the fact that in the course of the proceedings initiated by a complaint against the Company, the Commander of the Municipal Police in R. withdrew from the request expressed in the complaint to order the Company to disclose the subscriber's personal data [...], the proceedings had to be discontinued as redundant, pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure.

The doctrine indicates that: "the objectivity of administrative proceedings", as provided for in Art. 105 § 1 of the Code of Administrative 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. .

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

The decision is final. Based on Article. 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), in connection with art. 15 of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court, within 30 days from the date of its delivery 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 the right to assistance, including exemption from court costs.

2019-05-29