

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

April

2019

DECISION

ZSPU.440.469.2018

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), 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. 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 Mr. TR, residing in in W., regarding the processing of his personal data by J. S. running a business under the name of J. based in W. and Zakład Gospodarowania Nieruchomościami in [...] based in W., 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 Mr. T. R., seized in W., hereinafter referred to as the Complainant, regarding the processing of his personal data by J. S., running a business under the name of J. based in W., hereinafter referred to as the Entrepreneur, and Zakład Gospodarowania Nieruchomościami in [...] based in W., hereinafter referred to as ZGN. In the content of the above-mentioned of the complaint. The complainant raised the quotation: "The Real Estate Administration of the building at ul. O. [A.] disclosed [without the consent and knowledge of my person] personal data to an employee of the Management Board of Real Estate Management (...), ie name, surname, address. This took place between [...] and [...] November 2017 (...). Please explain whether the Real Estate Administration of the O. [A.] building or the Real Estate Management Board (...) did not breach the

Personal Data Protection Act and whether the employees of ZGN have the right to obtain personal data of property owners without the knowledge of these persons (...) ”.

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

ZGN is a budgetary unit [...] W. - § 1 point 1 of the ZGN Statute - in the case files.

The statutory task of the ZGN is, in particular, to manage within the scope of day-to-day management, in the manner and on the terms specified by the provisions of law and the decisions of the bodies of [...] [...] W. This task includes, in particular, collecting fees and compensation for non-contractual use of the entrusted assets [...] W. and conducting debt collection in this respect - § 3 point 1 b) and § 4 point 1 e) of the ZGN Statute; letter from ZGN of [...] February 2018 addressed to the Inspector General for Personal Data Protection (currently: the President of the Personal Data Protection Office) - in the case files.

The ZGN obtained from the Entrepreneur the personal data of the Complainant in the scope of his name, surname and address in order to implement the above-mentioned statutory obligations of ZGN by establishing a person obliged to pay remuneration for non-contractual use of the land [...] W. located at ul. O. in W., consisting in seizing it with renovation debris from premises No. [...] located in the property at this address and collecting the said receivable - letter from ZGN of [...] February 2018 addressed to the Inspector General for Personal Data Protection (currently : The President of the Personal Data Protection Office); e-mail correspondence between ZGN and the Entrepreneur on [...] - [...] November 2017; Entrepreneur's official note of [...] November 2017 - in the case file.

The owners of the premises no. [...] at ul. O. in W. is the Complainant and Ms M. Z. - e-mail correspondence between ZGN and the Entrepreneur of [...] - [...] November 2017 - in the case files.

The complainant is a member of the "O." with its seat in W. because premises no. [...] at ul. O. in W. is part of the housing stock of the above-mentioned Community - a letter from the Entrepreneur of [...] March 2018 addressed to the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) - in the case files.

The entrepreneur is the administrator of the common property of the Housing Community "O." based in W., on the basis of a contract for administration of a common property of [...] May 2007 concluded with that Community - contract of [...] May 2007 - in the file.

A member of the Housing Community "O." is also [...] W. as the owner of residential premises No. [...] - the Entrepreneur's

letter of [...] March 2018 addressed to the Inspector General for Personal Data Protection (currently: President of the Office for Personal Data Protection) - in the case files.

The Entrepreneur processes the Complainant's personal data in the scope of the first and last names, PESEL number, address of residence and telephone numbers provided by the Complainant in order to perform the obligations arising from the above-mentioned agreements for the administration of a common property - the Entrepreneur's letter of [...] March 2018 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) and (2) 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 handle 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.

It should also be noted that pursuant to Art. 11 sec. 1 of the Act of 27 August 2009 on public finances (Journal of Laws of 2017, item 2077, as amended) budgetary units are organizational units of the public finance sector without legal personality, which cover their expenses directly from the budget, and collected they transfer the income to the account of the state budget income or the budget of the local government unit, respectively. Pursuant to Art. 11 sec. 2 of the Public Finance Act, a budgetary unit operates on the basis of the statute specifying in particular its name, seat and subject of activity.

Pursuant to Art. 6 of the Act of June 24, 1994 on the ownership of premises (Journal of Laws of 2018, item 716, as amended), all owners whose premises are part of a specific real estate form a housing community. Pursuant to Art. 18 sec. 1 of the Act on the ownership of premises, the owners of the premises may, in the agreement on establishing separate ownership of premises or in an agreement concluded later in the form of a notarial deed, specify the method of managing the common real estate, and in particular may entrust the management to a natural or legal person.

Referring the above to the circumstances of the case, it should first be pointed out that the Entrepreneur as the manager of the

Housing Community "O." is entitled to process the personal data of the Complainant as a member of this Community due to the conclusion with the Community of an agreement specifying the manner of management of a common property, the admissibility of which is provided for in Art. 18 sec. 1 of the act on ownership of premises. The Community entrusted the administration of the Entrepreneur who, pursuant to Art. 28 GDPR has become a processor. Thus, it should be stated that the Entrepreneur 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 Entrepreneur is a processor within the meaning of art. 4 sec. 1 point 8 of the GDPR.

In turn, having regard to the complaint of the Complainant regarding the disclosure of his personal data by the Entrepreneur to the ZGN and their processing by the ZGN, it should be stated that this action was based on Art. 6 sec. 1 letter f) of the GDPR, because it was necessary to fulfill the statutory obligation of the ZGN consisting in determining the person obliged to pay the remuneration for the non-contractual use of the land in W., located at ul. O. in W. and the collection of this claim. It was therefore a necessary measure for the purpose of the legitimate interest pursued by the ZGN.

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 art. 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 entry fee for the complaint is PLN 200. The party has the right to apply for an exemption from court fees.

2019-04-25