

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

September

2018

DECISION

ZSOŚS.440.45.2018

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) and Art. 12 point 2, art. 22, art. 25 sec. 1 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. 160 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000), after conducting administrative proceedings regarding the complaint of Mr. A. P., residing in in W., for the processing of his personal data by the Director of the Remand Center in W., the President of the Office for Personal Data Protection

discontinues the proceedings

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Mr. A. P., residing in in W., hereinafter referred to as the Complainant, for the processing of his personal data by the Director of the Remand Center in W., hereinafter referred to as the Director.

In the content of the above-mentioned of the complaint The complainant submitted that, in his opinion, there was none of the conditions entitling the Director to process his personal data. The applicant stressed that he was not an employee of the Remand Center, nor was he a former detainee. In the Complainant's opinion, the processing of his personal data by the Director without his consent violates his rights and freedoms, including the right to legal protection of private and family life, honor and good name, and the right to request rectification and removal of untrue, incomplete or collected data in a manner inconsistent with the law . The complainant added that the Director had also failed to fulfill his obligation to provide information under Art. 25 sec. 1 of the Personal Data Protection Act.

Bearing in mind the above, the complainant requested the Inspector General to order the Director of the Remand Center to remedy the deficiencies in the processing of his personal data by fulfilling the information obligation resulting from Art. 25 sec.

1 of the Act on the Protection of Personal Data and the removal of his personal data made available to other entities without his consent.

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.

The Director obtained on [...] November 2010 the applicant's personal data from Ms M. P. (the applicant's wife and an officer of the Remand Center), in connection with the submission by the above-mentioned an application for an equivalent for the lack of housing for officers of the Prison Service. Mrs. M. P. submitted the above-mentioned a request to exercise the power provided for in Art. 178 of the Act of 10 April on prison service (Journal of Laws of 2017, item 631). To the above-mentioned of the application, Ms MP attached photocopies of the Complainant's ID card, certificate of the Mayor of W. of [...] October 2010, ref. the applicant and his wife were not listed in the tax records as taxpayers of agricultural, forest and real estate tax in the commune of W.), as well as confirmation of the complainant's permanent residence registration of [...] September 2010 issued by the Municipal Office in W.

The Director did not fulfill the information obligation under Art. 25 sec. 1 of the Personal Data Protection Act. The Director of the Detention Center pointed out that the voluntary transfer of personal data by the data subject to the entity whose name was correctly named and to the appropriate address indicates that the person knew both the name and the address of the Remand Center. The director of the Remand Center explained that the transfer of these data by the applicant when applying for the equivalent for the lack of a flat indicated that the transferor was aware of the purpose of the transfer.

The Director of the Investigation Detention Center was exempt from the obligation under Art. 25 sec. 1 of the Act on the Protection of Personal Data in connection with joke. 25 sec. 2 point 5 of the Act on the Protection of Personal Data, pursuant to which the provision of Art. 25 sec. 1 of the discussed act shall not apply if the data is processed by the administrator who is a state body, local government body and a state and municipal organizational unit.

The Director of the Remand Center, in a letter of [...] February 2017 ([...]) asked the Mayor of the City and Commune of P., whether and since when the applicant is a tax payer on real estate and land owned in the city and commune, P. We On this request, the Director of the Investigation Detention Center provided the following personal data of the applicant: name and surname, parents' names, home address, PESEL number.

The director of the Remand Center is not currently processing the applicant's personal data. The Director of the Remand Center, in a letter of [...] October 2017, stated that he had deleted all the applicant's data and of the day. The detention center does not process them.

It should be noted here that as of the date of entry into force of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000), i.e. May 25, 2018, the Office of the Inspector General for Personal Data Protection became 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 on the basis of 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 Code of Administrative Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In these facts, the President of the Personal Data Protection Office considered the following.

Regarding first of all the processing of the complainant's personal data by the Director of the Remand Center, it should be noted that as a result of the investigation, it was found that this entity definitively ceased to process the above-mentioned data. Thus, pursuant to the provisions of Art. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), hereinafter referred to as hereinafter, the Administrative Procedure Code, when the proceedings for any reason have become groundless in whole or in part, the public administration body issues a decision to discontinue the proceedings, respectively, in whole or in part. The doctrine indicates that: "the redundant nature of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance. The prerequisite for discontinuation of the proceedings may exist even before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the proceedings, i.e. in a case already pending before the administrative authority "(B. Adamiak, J. Borkowski," Kodeks administracyjny. Komentarz, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491).

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. . The irrelevance of the proceedings may also result from a change in the facts of the case.

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the Personal Data Protection 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. The condition for issuing by the authority the decision referred to in the above-mentioned provision is the existence of a breach of the right to the protection of personal data at the time of issuing the administrative decision.

The Supreme Administrative Court in its judgment of November 19, 2001 (file reference number II SA 2702/00) stated: "(...) since in the course of the (...) administrative proceedings, the violation of the law that was to be related to decision, this proceeding has become pointless. In the light of the provision of Art. 18 sec. 1 of the Act, initiated by GIODO ex officio or at the request of the person concerned, the proceedings concerning the infringement of the provisions on the protection of personal data may only end with the issuance of an administrative decision ordering the data controller to restore the legal status, in particular: removal of deficiencies, supplementing, updating, rectifying, disclosing or not sharing personal data, applying additional security measures to the collected data, suspending the transfer of personal data to a third country, securing data or transferring it to other entities, deletion of personal data. In the facts of the case at hand, no such decision could have been issued, as the violation had previously been restored to the lawful state (...) ”.

In a situation where the Director of the Remand Center is not currently processing the complainant's personal data, the legality examination in the context of determining the possible existence of premises for the formulation of the warrant referred to in Art. 18 sec. 1 of the act, would of course be redundant.

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

Based on Article. 127 § 3 of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), from this decision, 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. 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.

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