THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 21

May

2021

DECISION

DKE.523.11.2021

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735) and pursuant to 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. 23 sec. l points 2 and 3 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 Art. 6 sec. 1 lit. c) and lit. f), art. 28 sec. 3 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 UE L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), in connection with Art. 105 paragraph. 4 and art. 105a paragraph. 4 and 5 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2020, item 1896, as amended), after conducting administrative proceedings regarding the complaint of Mrs. ML, against the processing of her personal data by GSA, the President of the Office Personal Data Protection

refuses to accept the request

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Ms M. L., hereinafter also referred to as "the Complainant", about the processing of her personal data by G. S.A., hereinafter referred to as "the Society".

The complainant indicated that she had concluded with the Society (as quoted) "a contract for the so-called […] ”Due to the fact that the policy's rate of return turned out to be very low compared to the amount of premiums paid, the applicant decided to terminate this contract. She was informed via the Society's helpline that a letter of termination of the contract should be sent along with the bank account number. The complainant sent a letter to the Society, but the funds were not credited to the given account. Consequently, the applicant intervened again via the hotline. This time, she was informed that the request to terminate the contract should be submitted on a special form, which should be certified by a notary, official or agent of the

Society. The applicant requested that an agent of the Society contact her and verify her signature. On [...] October 2017, the applicant received a call from [...]. The caller introduced himself that he was (quoted): "an agent [...]" and asked the complainant about the problem she wanted to report to the Society. The complainant informed that she could not recover her money in connection with the concluded contract [...] because she was still being misled. In response, the complainant was instructed to send by e-mail to the following address: [...] her data included in the form concerning such payments. The complainant had sent the data requested and was to receive a reply within half an hour. For a period of one week from the date of sending the above-mentioned The applicant did not receive any reply.

In connection with the above, the complainant, fearing that her personal data would be obtained by an unauthorized person, requested a verification of the legality of the data obtained by the Society's agent using the e-mail address; […].

In the course of the investigation conducted in this case, the President of the Personal Data Protection Office established the following facts:

The company processed the complainant's personal data on the basis of an insurance contract [...] of [...] November 2005, called by the complainant "a contract for the so-called […] ". On [...] October 20017, the contract was terminated and the funds due to the applicant were paid out by the Society on [...] October 2017.

The premise legalizing the processing of the complainant's personal data by the Society was Art. 23 sec. 1 points 2 and 3 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 "Personal Data Protection Act of 1997", and from May 25, 2018, art. 6 sec. 1 lit. b) and c) 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 personal data) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2) hereinafter referred to as "Regulation 2016/679".

The Society processed the complainant's personal data pursuant to art. 41 paragraph. 1 of the Act of 11 September 2015 on insurance and reinsurance activities (Journal of Laws of 2020, item 895, as amended), according to which the insurance company processes the data referred to in Art. 9 of Regulation 2016/679, concerning health, the insured or entitled under the insurance contract, contained in insurance contracts or declarations submitted prior to the conclusion of the insurance contract, for the purpose of assessing the insurance risk or performance of the insurance contract, respectively, to the extent necessary

due to the purpose and type of insurance.

However, the basis for the processing of the complainant's personal data by Ms J. K. running a business under the name of J. K. hereinafter referred to as: "insurance intermediary" was Art. 31 of the Personal Data Protection Act of 1997, and from May 25, 2018, Art. 28 of the Regulation 2016/679.

The Society concluded a cooperation agreement with Ms J. K. with […] November 2014 No. […] (a copy of the above-mentioned agreement with annexes to this agreement with: […] September 2015 and […] March 2015). The Society [...] on November 2014 also granted Ms J. K. authorization to perform agency activities on behalf of the Society, constituting Appendix No. [...] to the above-mentioned of the contract (copy of the above authorization with amending authorizations of: […] March 2015 and […] September 2015).

The Society, in a letter of [...] March 2018, informed that the personal data sent by the Complainant to the following address: [...] had been obtained by the Society through Ms. J. K., the insurance intermediary (agent) of the Society.

The Society - in accordance with its explanations submitted in these proceedings, in a letter of [...] April 2018, indicated that the complainant's personal data was protected against unauthorized access by third parties.

Currently, the Society processes the complainant's personal data resulting from the above-mentioned contracts pursuant to Art. 6 sec. 1 lit. c) and f) of Regulation 2016/679, in connection with art. 74 sec. 2 point 8 of the Accounting Act of September 29, 1994 (Journal of Laws of 2021, item 217) and art. 8 section 4a, art. 9k of the Act of March 1, 2018 on counteracting money laundering and financing terrorism (Journal of Laws of 2020, item 971, as amended) for archival purposes for a period of 5 years, counting from the first day of the year following the year in which the transaction was carried out with the client, as well as for the purposes of pursuing claims and defending against any claims related to the implementation of the above-mentioned the contract.

After analyzing the evidence collected in the case, the President of the Office for Personal Data Protection states as follows.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data entered into force (Journal of Laws of 2019, item 1781), hereinafter also: "the Act on the Protection of Personal Data of 2018 r. "

Pursuant to Art. 160 sec. 1-3 of the Act on the Protection of Personal Data of 2018, 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 Personal Data Protection Act of 1997. in

accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended). At the same time, the activities performed in the proceedings initiated and not completed before the date of entry into force of the provisions of the Act on the Protection of Personal Data of 2018 remain effective.

From May 25, 2018, Regulation 2016/679 also applies.

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 monitors and enforces the application of this regulation (point a) and considers complaints submitted by the data subject or by - in accordance with Art. 80 by Regulation 2016/679 - the entity, organization or association, 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 (point f). The instruments for the implementation of the tasks provided for in Art. 57 sec. 1 of Regulation 2016/679 are in particular specified in its art. 58 sec. 2 remedial powers, including the possibility of: ordering the controller or processor to comply with the data subject's request resulting from their rights under this Regulation (Article 58 (2) (c)), ordering the controller or processor to adjust the processing operation to the provisions of this Regulation and, where applicable, an indication of the method and date (Article 58 (2) (d)).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the actual state of affairs at the time of issuing this decision. As the doctrine points out, “the 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 a public administration authority issues an administrative decision based on the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure, M. Jaśkowska, A . Wróbel, Lex., El / 2012). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 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 as at the date of issuing the decision on the matter and whether it is done in a legal manner".

Regulation 2016/679 constitutes provisions on the protection of natural persons with regard to the processing of personal data

and provisions on the free movement of personal data, and protects the fundamental rights and freedoms of natural persons, in particular their right to the protection of personal data (Article 1 (1) and (2) of Regulation 2016 / 679). This issue was adequately regulated by Art. 2 clause 1 of the Act on the Protection of Personal Data of 1997. In the light of the provisions of the above-mentioned legal act, the processing of personal data is authorized when any of the conditions listed in Art. 6 sec. 1 of Regulation 2016/679 (previously Article 23 (1) of the Personal Data Protection Act of 1997). These conditions apply to all forms of data processing listed in art. 4 point 2 of Regulation 2016/679 (formerly Article 7 point 2 of the Personal Data Protection Act of 1997), including, in particular, their disclosure. 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.

Pursuant to the wording of Art. 23 sec. 1 u.o.d.o. 1997, in force in the period in which the Company obtained the complainant's personal data and in which the complainant lodged a complaint with the GIODO in this case, the processing of personal data was permissible when: the data subject consents to it, unless it concerns deletion of its data (point 1), it is necessary to exercise the right or fulfill an obligation resulting from a legal provision (point 2), it is necessary to perform the contract when the data subject is its party or when it is necessary to take action before concluding the contract at the request of the data subject (point 3), it is necessary to perform the tasks specified by law for the public good (point 4), it is necessary to fulfill legally justified purposes pursued by data administrators or data recipients, and the processing is not violates the rights and freedoms of the data subject (point 5).

Pursuant to the currently applicable regulation (Article 6 (1) of Regulation 2016/679), data processing (each activity falling within this concept) is lawful only in cases where - and to the extent that - what at least one of the following conditions: a) the data subject has consented to the processing of his personal data for one or more specific purposes; 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.

Referring the above-mentioned provisions to the actual state of the case, it should be stated that both in the legal state in force until May 24, 2018 (governed by the provisions of the Act on the Protection of Personal Data of 1997) and in the current legal state (from May 25, 2018). r., i.e. from the date of application of the provisions of Regulation 2016/679), one of the several independent grounds for the processing of personal data is the necessity of this processing to perform the contract to which the data subject is a party, or to take action at the request of the person to whom the data relates to, prior to the conclusion of the contract (b); the necessity of this processing to fulfill the legal obligation incumbent on the administrator (c) and the necessity for the implementation of legally justified goals (interests) of the administrator. The Society has relied on these grounds and continues to do so in the present case.

On the other hand, the issue of processing the complainant's personal data on the basis of legal provisions was regulated in the Act of 11 September 2015 on insurance and reinsurance activities (Journal of Laws of 2020, item 895, as amended). Pursuant to the provisions of the Act on the Activity, insurance companies collect personal data of clients in connection with the conclusion and implementation of insurance contracts, reinsurance contracts and insurance guarantee contracts. These provisions allow for shaping the content of the said contracts within the limits of the applicable legal provisions. Pursuant to Art. 15 of the aforementioned Act, insurance companies provide insurance coverage on the basis of an insurance contract concluded with the policyholder (section 1). The insurance contract is voluntary, subject to the provisions of the Act of May 22, 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Office of Motor Insurers (section 2), (...) the general terms and conditions of the insurance and other forms of the contract are formulated unambiguously and in understandable (section 3), and their content is published by the insurance undertaking on its website (section 4). The provisions of the insurance contract, general terms and conditions of insurance and other contract templates shall be interpreted ambiguously in favor of the policyholder, the insured or the beneficiary under the insurance contract (section 5).

In connection with the matter at hand, the content of Art. 31 of the Personal Data Protection Act of 1997 (under the provisions of the GDPR, its counterpart is currently Art.28), according to which the controller may entrust another entity, by way of a written contract, with the processing of data (section 1), while the entity referred to in sec. 1, may process data only to the extent and for the purpose provided for in the contract (section 2), and prior to the commencement of data processing, it is obliged to take measures securing the data set, referred to in art. 36-39, and meet the requirements set out in the provisions referred to in Art. 39a. The entity is responsible for compliance with these provisions as the data controller (paragraph 3). A

characteristic feature of the entrustment agreement is that the data controller does not have to personally perform activities related to the processing of personal data. For this purpose, it may use the services of specialized external entities, commissioning them to perform the entire process of personal data processing, or only certain activities, e.g. collection or storage. In the event of the transfer of personal data, we deal with the processing of data on behalf of the administrator, within the limits specified in the data processing agreement and not for the processor's own purposes, but for the purposes of the data administrator. Importantly, when entrusting the processing of personal data, their administrator does not change.

According to the content of Art. 28 sec. 3 of Regulation 2016/679, the processing by the processor takes place on the basis of a contract or other legal instrument that are governed by Union law or the law of a Member State and are binding on the processor and the controller, determine the subject and duration of processing, nature and purpose of processing, type of personal data and categories of data subjects, obligations and rights of the controller.

Considering the above provisions of law, the President of the Office found that no confirmation of the complainant's fears regarding the possibility of transferring her personal data to an unauthorized person was found, because in the course of these proceedings it was established that the complainant's personal data through an insurance intermediary properly empowered on the basis of the above-mentioned the contracts and authorizations were transferred to the Society, which resulted in the payment by the Society on [...] October 2017 of the funds due to the applicant.

The assessment carried out by the President of the Personal Data Protection Office in each case serves to examine the legitimacy of the referral to a specific subject of the order, corresponding to the disposition of art. 18 sec. 1 of the Act on the Protection of Personal Data of 1997, aimed at restoring a legal state in the process of data processing - it is therefore justified and necessary only insofar as there are irregularities in the processing of personal data.

In the opinion of the President of the Office for Personal Data Protection, there are no grounds to conclude that the Complainant's personal data are processed by the Society in a manner inconsistent with the provisions on the protection of personal data, and therefore there was no prerequisite for the President of the Office to issue a decision ordering the restoration to legal status.

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 Civil Procedure of the decision, the party has the right to submit an application for reconsideration of the case within 14 days from the date of its delivery 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 entry fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-05-24