THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 13

September

2019

DECISION

ZSOŚS.440.102.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 12 point 2, art. 27 sec. 1 and 2, point 2, art. 23 sec. 1 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), in connection with Art. 100 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), after conducting administrative proceedings regarding the complaint of Mr. MK (residing [...]), represented by Mr. PG (Kancelaria Radcy Prawnego, ul. [...]) for the processing of his personal data in the National Police Information System (KSIP) by the Police Commander in Chief (ul. Puławska 148/150, 02-624 Warsaw ) and processing and sharing of the complainant's personal data by the Municipal Police Commander in K. (ul. [...]),

I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (now: the Office for Personal Data Protection) received a complaint from Mr MK (hereinafter: "the Complainant") about the processing of his personal data in the National Police Information System (hereinafter: "KSIP") by the Police Commander in Chief (Warsaw, ul. Puławska 148/150), (hereinafter: "KGP") and the processing and disclosure of the complainant's personal data by the Municipal Police Commander in K. (hereinafter: "KMP").

In the complaint, the complainant indicated that KGP processed his personal data in the KSIP system. On the other hand, KMP processes and discloses the complainant's personal data in an unauthorized manner. At the same time, the complainant requested that the processing of his personal data be legalized, and a decision was issued ordering KGP to delete his personal data stored in the KSIP system.

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office obtained

explanations regarding the circumstances of the case, read the evidence and made the following findings.

From the submitted explanations of the Municipal Police Headquarters, it appears that the District Court [...] II Criminal Division [...] conducting proceedings in the case of an offense with reference number Act. [...] against the Complainant asked the KMP to send information from the drivers' file regarding the Complainant, providing information on the number of active penalty points. In response, the NPM by letter of [...] September 2016 ([...]) sent to the above-mentioned Court the requested information.

On the other hand, the explanations sent by KGP show that the complainant's personal data are processed in the register of drivers who violate road traffic regulations. On the other hand, the KSIP system enables access and processing of information, including personal data, from data files kept by the Police on the basis of separate regulations, including the records of drivers violating road traffic regulations. At the same time, he indicated the legal grounds for the processing of personal data in the KSIP system, including art. 20 section 1, 20 section 2b, 20 sec. 2c, 21 nb paragraph. 1 and 2, 20 sec. 1d, 20 sec. 2ad and 2ab of the Act on the Police Act of April 6, 1990 (Journal of Laws of 2019, item 161, as amended). In addition, it indicated that the legal basis for the processing of personal data in connection with offenses committed in road traffic was Art. 130 of the Act of June 20, 1997, Road Traffic Law (Journal of Laws of 2018, item 1990, as amended), Regulation of the Minister of the Interior and Administration of April 25, 2012 on dealing with drivers who violate road traffic regulations (Journal of Laws, item 488), and art. 16 sec. 1 of the Act of May 22, 2018 amending the Act - Road Traffic Law and certain other acts (Journal of Laws, item 957). It also pointed out that in the applicant's case the sentence had not been expunged. Between subsequent road traffic offenses committed by the Complainant, in no case elapsed 2 years from the execution, forgiveness or limitation of the execution of the penalty, therefore there were no grounds for removing the entry concerning the Complainant.

Both KGP and KMP indicated that the Complainant did not address the above-mentioned entities to delete their personal data processed by the above-mentioned entities.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

The above-mentioned Act on the Protection of Personal Data of August 29, 1997 provides legal grounds for applying state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, assessing the status of the case

and subsuming, determines whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in art. 23 sec. 1 above of the Act on the Protection of Personal Data and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuing of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing. Pursuant to Art. 1 of the aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, in the sense referred to in Art. 7 point 2 of this Act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time.

In the course of the proceedings, the President of the Personal Data Protection Office found that the complainant had committed traffic offenses. In this case, the content of Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, which states that the processing of data is permissible when it is necessary to exercise the right or fulfill the obligation resulting from the law. Additionally, it is necessary to refer to Art. 27 sec. 1 which states that it is forbidden to process data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, religious, party or trade union affiliation, as well as data on health, genetic code, addictions or sexual life as well as data on convictions, judgments on punishments and fines, as well as other judgments issued in court or administrative proceedings. Whereas paragraph 2 point 2 of this article, I indicate that the processing of data referred to in para. 1, is permissible if a special provision of another act allows the processing of such data without the consent of the data subject and provides full guarantees of their protection.

The legal basis for the processing of personal data of persons who have breached the provisions of the Road Traffic Act is Art. 130 of the Road Traffic Act of June 20, 1997 (Journal of Laws of 2018, item 1990, as amended) in connection with Art. 16 (1) of the Act of 22 May 2018 amending the Act - Road Traffic Law and certain other acts (Journal of Laws item 957), the police keep records of drivers who violate road traffic regulations. A specific infringement is assigned an appropriate number of points on a scale from 0 to 10 and entered into the register. The violations of the road traffic regulations, which were not assigned a point value, are also entered. Points are removed after 1 year from the date of the violation, unless the driver has committed violations before the expiry of this period, for which the assigned number of points would exceed 24 points on the basis of valid

decisions. Additionally, in accordance with the Ordinance of the Minister of the Interior and Administration of April 25, 2012 on dealing with drivers who violate road traffic regulations (Journal of Laws, item 488), § 2 sec. 1. A driver who, while driving a motor vehicle or moped, has committed an infringement of road traffic regulations, hereinafter referred to as "the infringement", shall be entered in the register. Pursuant to § 4 sec. 1 of the regulation, a final entry in the records shall be made if the infringement has been established with a final and binding decision: a court judgment, a court decision on conditional discontinuation of proceedings, a penalty notice or a decision of the adjudicating body in a case of infringement in disciplinary proceedings. Additionally, according to § 4 sec. 2 of the Regulation, prior to issuing the decision referred to in para. 1, a temporary entry shall be entered into the records immediately after disclosure of the infringement. The provisional entry contains information on the number of points that will be finally assigned in the event that the violation is confirmed with this decision. On the other hand, the rules for deleting entries are set out in § 5 para. 1 of the regulation, stating that the authority keeping the records removes from the records the temporary entry referred to in § 4 sec. 2, if in the infringement procedure conducted by the competent authority, Art. 41 of the Act of 20 May 1971 - Code of Petty Offenses (Journal of Laws of 2010, No. 46, item 275, as amended), the person to whom the entry relates was acquitted of the charge of infringement by a final judgment, it was found, that: a) the act was not committed or there is no data sufficient to justify the suspicion of its commission, b) the act does not contain the features of a prohibited act, c) the criminal record has been statute-barred, d) the person subject to the entry has died. The authority keeping the records removes the final entry from the records if the punishment (conviction) has been obliterated or the person entered in the records has died. The authority issuing the decision on the refusal to initiate or to discontinue the proceedings shall notify the organizational unit of the Police, referred to in § 4 sec. 8. Art. 46 § 1 of the Code of Petty Offenses, that the punishment is considered void after 2 years from the execution, donation or limitation of the execution of the penalty. Art. 46 § 2 of the Code of Petty Offenses, stating that if the punished person committed a new offense before the expiry of the period provided for in § 1, for which he was punished with arrest, restriction of liberty or a fine, punishment for both offenses shall be deemed void after 2 years from execution, donation or from the statute of limitations for the execution of the penalty for a new offense. In the case under examination, the President of the Personal Data Protection Office determined that in the above case, Art. 46 § 2 of the Code of Petty Offenses, due to the fact that the 2-year period has not elapsed since the performance, donation or limitation of the new offense, this means that the premise of exposing the penalty, and thus deleting the complainant's personal data, has not been met.

Regarding the KMP disclosure of the complainant's personal data to the District Court [...], one should indicate § 10 of the Regulation of the Minister of Internal Affairs and Administration of 25 April 2012 on dealing with drivers violating road traffic regulations (Journal of Laws, item 488), which clearly indicates the entities authorized, including courts, to receive information about entries in the register of drivers violating road traffic regulations.

Bearing in mind the above, it should be stated that the procedure of KGP and NPM in the discussed scope does not raise any doubts, the personal data of the Complainant are processed in accordance with the applicable provisions of law in this respect.

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

The party has the right to appeal against the decision to 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 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.

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