

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 12

April

2019

DECISION

ZSPU.440.512.2018

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, No. 2096, as amended) and Art. 160 sec. 1 and 2 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended) in connection with joke. 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. 5 sec. 1, art. 57 sec. 1 letter a) and f) 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 data protection (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, p. 2 as amended), after conducting administrative proceedings regarding the complaint Mr. WS, residing in [...], for the processing of his personal data by the Head of the Tax Office in L. [...] (currently: Director of the Tax Administration Chamber in W. [...]), President of the Personal Data Protection Office refuses to accept the request.

Justification

The Personal Data Protection Office received a complaint from Mr. W.S., residing in in [...] (hereinafter: the Complainant), for the processing of his personal data by the Head of the Tax Office in L., based in L. [...] (currently: Director of the Tax Administration Chamber in W., based at [...]; further : US).

In the content of his complaint, the complainant indicated that he was an attorney in the tax proceedings, during which he submitted the relevant power of attorney to the case files, indicating the correspondence address (address of the office). Moreover, he explained that on [...] January 2015, the inspection report was submitted to his registry. The content of the protocol indicated his address of residence, which he did not disclose to the Office.

In connection with the above, he applied for a decision ordering the restoration to legal status and the removal of his personal

data (address of residence) from the case files.

In order to consider the application in question, the personal data protection authority carried out an explanatory procedure, in the course of which it established the following facts.

The complainant runs a business (Kancelaria Doradztwa Podatkowy [...]) (a printout from CEiDG is included in the case file).

In the files of the case in question there is a copy of an excerpt from the tax inspection report carried out by the Head of the

Tax Office in L., which includes the address of the entity keeping the tax books - XYZ. (data questioned by the Complainant).

In the submitted explanations, the Tax Office pointed out that in the The proceedings office acted as the representative of the controlled entity and as the entity keeping its tax books. As a result of generating the control report from subsystem A, which uses the data collected about the taxpayer in system B, the data of the entity keeping the tax books and its address: XYZ were automatically "migrated". The data on the entity keeping the tax books of the controlled entity come from the CEiDG-1 application of [...] .01.2014 (item 21 of the said application). Moreover, the Tax Office explained that part of the inspection report includes information on registration data and addresses of business activity, information on other addresses of places of business activity by an indicated natural person, directly related to that person (module C), and in other parts information on proxies and entities keeping tax books of the controlled. However, in part D.3 of the protocol "Tax books", as the person responsible for keeping the tax books, the inspectors entered the first and last name of the complainant by hand. As the address of the place where the tax books are stored, the system automatically migrated "ABC", while as the "tax bookkeeper", the system automatically migrated the registration data in terms of name, surname, tax identification number, date from when the entity keeps tax books and the registration address (which is also the address of residence).

In the case file there is a copy of the Tax Office's letter of [...] February 2014 addressed to the Complainant's principal (through the Complainant), which states that "in the inspection report the authority unlawfully disclosed the Plenipotentiary's place of residence is justified. Despite this irregularity, the attorney's personal data was not disclosed with regard to the control carried out by Mr. [...]. This is due to the fact that the inspection report was sent only to the proxy's address and no one else had access to this data. At the same time, the Controlling Body informs that measures have been taken to protect your personal data and in the event that Mr. [...] wants to exercise the rights under Art. 178 § 1 of the Tax Ordinance Act, ie inspecting the case files, making notes, copies or copies of them, data regarding your address of residence will be excluded from the case files by way of a decision (...)".

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

First of all, it should be noted that 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), i.e. on May 25, 2018, the Office of the General Inspector of Protection Personal Data has become the Office for Personal Data Protection. Based on Article. 160 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data, 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 (also called the President of the 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 Code of Administrative Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In the light of the above, the provisions 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 the repeal of Directive 95/46 / EC, the General Data Protection Regulation (Journal of Laws of the EU of May 4, 2016, L 119/1, as amended), hereinafter referred to as the GDPR, and in the procedural scope, the provisions of the Act on the protection of personal data of 1997

It should be noted here that pursuant to Art. 160 sec. 4 and 5 of the Act of November 16, 2016. Provisions introducing the Act on the National Revenue Administration (Journal of Laws of 2016, item 1948, as amended), the tax administration chamber joins the customs chamber and the tax inspection office (section 4). The Tax Administration Chamber assumes all rights and obligations of the combined units, regardless of the nature of the legal relationship from which these rights and obligations arise (section 5). Art. 162 sec. 2 above of the Act Heads of tax offices become bodies of the National Tax Administration. And according to Art. 232 above Act on this matter, the Director of the Tax Administration Chamber became the administrator of personal data, the administrator of which was the Director of the Tax Control Office.

Regarding the above, it should be noted that the complainant's data administrator is currently the Director of the IAS in W.

The data controller has certain obligations under the provisions on the protection of personal data. It is not only the obligation to legally process data (in accordance with Article 6 of the GDPR, previously Article 23 of the Act), in accordance with the principles set out in the GDPR (Article 5 of the GDPR), but also to properly secure this data.

The data controller is obliged to process data in accordance with the law, fairly and transparently, in line with the purpose of obtaining, but also in a correct manner (Article 5 (1) (d) of the GDPR).

At this point, it should be pointed out that the purpose of processing the complainant's private address should be to identify him as a natural person (taxpayer), and not as a person running a business and acting as an attorney in the case file number [...].

In connection with the premise of art. 6 sec. 1 lit. c) GDPR, the collection of personal data should be carried out for specific purposes, so their further processing is not allowed in accordance with these purposes. This also applies to cases where this further processing is carried out by the same administrator. This purpose determines the scope of data processing. In the above case, obtaining the Complainant's private address from system D, in which he is defined as a taxpayer and not as an entrepreneur, went beyond the administrator's goal carried out by means of the above-mentioned system. In the opinion of the President of the Office, the correspondence should have been sent to the address indicated by the Complainant as the correspondence address (the address of the law office run by him), and not to his private address. Such action of the Tax Office was a violation of the principle of correct data processing (Article 5 (d) of the GDPR) and there were no legal grounds for it.

In the opinion of the authority, in the light of the explanations received from the Tax Office, the above-mentioned the event was incidental and there are currently no grounds to believe that in the case at the time of the decision by the personal data protection authority, the state of violation of the provisions on the protection of personal data exists and it is necessary to order the restoration of the lawful state.

When referring to the complainant's request to remove his personal data from the files of the case conducted by the Tax Office, it should be noted that pursuant to art. 76 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as the Code of Administrative Procedure, official documents drawn up in an assigned form by state authorities appointed for that purpose in their scope actions constitute evidence of what is officially stated in them.

When transferring the above-mentioned, it should be pointed out that the inspection report drawn up by the Tax Office is an official document and evidence of what has been certified therein. It constitutes a whole and interference with its content, by removing a fragment of data, would deprive it of the features of such a document. An official document uses the presumption of truthfulness (authenticity) and the presumption of truthfulness of what has been officially certified in it. Removal of any

elements from the Tax Inspection Protocol would change its content, and therefore would undermine its credibility. The above means that it is not possible to order the Tax Office by the President of the Office to delete the complainant's personal data from the above-mentioned the protocol or documents contained in the files of the case conducted by the Tax Office.

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 Administrative Procedure, 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 an exemption from court costs.

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