THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 20

February

2019

DECISION

ZSOŚS.440.93.2018

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 12 point 2, art. 22 and art. 23 sec. 1 point 2 and point 5 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 sec. 1 of the Act of December 14, 2018, the Act 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. J. P., residing in in Ł. to reconsider the case concluded with the decision of the Inspector General for Personal Data Protection of [...] March 2018 (reference number [...]) refusing to accept the application of [...] January 2016,

I uphold the contested decision of [...] March 2018, file ref. […]

Justification

The Office of the Inspector General for Personal Data Protection (currently: "Office for Personal Data Protection") received a complaint from Mr. JP, residing in Ł. (Hereinafter: "Complainants"), about the processing of his personal data by the Central Anticorruption Bureau (hereinafter: "CBA") , consisting in disclosing his personal data contained in the letter of [...] January 2015 addressed to the Director of the Delegation of the Central Anticorruption Bureau in [...] for the benefit of Mr. AK - an officer of the CBA (hereinafter: "the officer"). The complainant demanded that the deficiencies in the processing of his personal data be remedied.

In the course of the proceedings, the Inspector General for Personal Data Protection established the following facts:

1) In a letter of [...] January 2015, the applicant complained about the behavior of a CBA officer to the Director of the Delegation of the Central Anticorruption Bureau in [...]. (copy of the letter in the case file);

2) The head of the CBA [...], in a letter of [...] May 2016, explained that in the course of the conducted verification activities aimed at determining the legitimacy of taking any further disciplinary actions, the officer was presented with the content of the

letter from [...] January 2015, together with the complainant's personal data (letter from the Central Anti-Corruption Bureau in the case file);

3) The head of the CBA [...] in the above-mentioned the letter indicated that the disclosure of the content of the applicant's letter to the officer was intended to enable the officer to comment on the allegations presented in the letter;

4) The complainant, in connection with the disclosure of his personal data in the form of his name, surname and address, submitted a complaint to the Inspector General for Personal Data Protection, indicating that it was an unauthorized action. After conducting administrative proceedings in the case, the Inspector General for Personal Data Protection issued [...] in March 2018 (ref. [...]) an administrative decision by which he refused to accept the Complainant's request of [...] January 2015. The decision was served on the parties to the proceedings on [...] March 2018 (return acknowledgments of receipt in the case file). In the justification, the Inspector General referred to the provisions of Art. 23 sec. 1 point 2 and art. 23 sec. 1 point 5 of the Act of August 29, 1997 on the protection of personal data as conditions for the legality of the processing of personal data by the CBA. In addition, the provisions of the Act of June 9, 2006 on the Central Anticorruption Bureau (Journal of Laws of 2018, item 2104, as amended), hereinafter referred to as: the "CBA Act", regulating the rules and procedure for conducting disciplinary proceedings against officers CBA. The Inspector General emphasized that providing the officer with the content of the complainant's letter was intended to enable him to respond to the allegations presented, which was related to the fulfillment by the CBA of the obligation resulting from the provisions of law, consisting in the proper conduct of the proceedings initiated by the complainant regarding the violation of professional discipline. In the opinion of the Inspector General, there was no breach of the provisions on the protection of personal data by the CBA, and therefore considered the complaint filed by the Complainant to be groundless.

On [...] April 2018, the Complainant's application for reconsideration of the case resolved in the above-mentioned document was received by the Office of the Inspector General for Personal Data Protection. decision. The complainant submitted that Art. 23 sec. 1 point 5 of the Act of August 29, 1997 on the Protection of Personal Data is not justified for the actions taken by the CBA in connection with the complaint submitted by it. He emphasized that the content of the above-mentioned provision obliges the controller to specifically protect the interests of the person whose data is collected, including, inter alia, on not sharing this data with persons who are not administrators. In the present case, according to the complainant, his personal data was unauthorized disclosure to an officer who is neither the data controller nor the recipient of the data. Moreover, the

Complainant indicated that it was not necessary to provide his address to reply to the allegations raised in his complaint. The complainant alleged that the CBA violated the provisions on the protection of personal data also by disclosing his personal data to an officer, despite the fact that this person had not submitted any request in this regard. He also indicated that the provisions of the Act on the Central Anti-Corruption Bureau did not indicate the possibility of downloading photocopies of files or making notes at the stage of the screening procedure.

In order to supplement the evidence, the President of the Office for Personal Data Protection, in a letter of [...] October 2018, asked the Head of the CBA for additional explanations regarding the legal basis of the verification activities carried out, disclosure of the Complainant's personal data and the form of submitting a request for access to these data by an officer , as well as an indication of the group of people who could read the content of the complainant's letter of [...] January 2015. On [...] November 2018, the Office for Personal Data Protection received a letter from the Deputy Head of the CBA explaining that the then Director CBA delegations in [...]. ordered verification activities to be carried out to determine the legitimacy of taking any further disciplinary measures. As the legal basis for these actions, he indicated Art. 110 sec. 2 and art. 120 sec. 1 of the Act on the Central Anti-Corruption Bureau. Moreover, the Deputy Head of the CBA pointed out that the provisions of the Act on the Central Anti-Corruption Bureau did not provide for a specific legal basis for providing employees with the content of the complaints lodged against them, however, the head of the organizational unit must be able to demand an opinion of subordinates regarding the written comments on their work. Therefore, carrying out the verification activities and making the content of the complaint available to an officer of the CBA should be considered as falling within the competences of the disciplinary superior, resulting from Art. 110 sec. 2 in connection with joke. 120 sec. 1 of the Act on the Central Anti-Corruption Bureau.

Deputy Head of the CBA in the above-mentioned The letter also explained that the officer's request for consent to make a copy of the applicant's letter of [...] January 2015 and the consent itself given by the then Director of the CBA in [...]. were expressed orally. Providing the officer with the content of the complaint containing the complainant's personal data was necessary to initiate criminal proceedings aimed at protecting the officer's good name. As a result of the indictment, the District Court in Ł. By a judgment of [...] January 2016 found the applicant guilty of committing the offense under Art. 212 § 1 of the Act of 6 June 1997 Penal Code (Journal of Laws of 2018, item 1600, as amended).

It should be noted here that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data, i.e.

May 25, 2018, the Inspector General for Personal Data Protection became the President of the Office for Personal Data Protection. Pursuant to Art. 160 of this Act, the 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 in accordance with the principles set out in the Code of Civil Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

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

The Act of August 29, 1997 on the protection of personal data defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Act). Pursuant to the wording of art. 7 point 2 of the Act, data processing should be understood as any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Each of the ones indicated in Art. 7 point 2 of the Act, the forms of personal data processing should be based on one of the prerequisites for the legality of the processing of personal data, enumerated in art. 23 sec. 1 of the Act on the Protection of Personal Data. Due to the wording of Art. 7 of the Constitution of the Republic of Poland of April 2, 1997, according to which organs of public authority operate on the basis and within the limits of the law, the content of Art. 23 sec. 1 point 2 of the Personal Data Protection Act. Pursuant to Art. 110 sec. 1 of the Act on the CBA, the head of the CBA has disciplinary authorities towards all officers. In turn, paragraph 2 of this provision provides that the head of the organizational unit of the CBA has disciplinary authority over the officers serving in the subordinate organizational unit. This means that a manager who is a disciplinary superior, in the event of a justified suspicion that a disciplinary offense has been committed by an officer, is obliged to initiate disciplinary proceedings at the request of the immediate superior of the officer, at the request of the court or the public prosecutor, and on his own initiative. However, when such a request is submitted by the aggrieved party, the initiation of the proceedings is optional (Article 120 (1) (1) and (2) of the Act on the Central Anti-Corruption Bureau). Moreover, the regulation of Art. 120 sec. 3 above of the Act, which stipulates that if there are doubts as to the commission of a disciplinary offense, its legal qualification or the identity of the perpetrator, the disciplinary superior orders the performance of explanatory activities prior to instituting disciplinary proceedings. Detailed rules and procedure for conducting explanatory activities in the CBA are specified in the order of the Head of the CBA No. [...] of [...] October 2015. The disciplinary

commissioner, on the basis of an order of the disciplinary superior, carries out activities aimed at establishing the actual state of affairs and, for this purpose, may request provide verbal or written statements from the officers and employees of the CBA and prepare official notes (§ 5 section 2 point 3, § 6 section 2, § 9 of the above-mentioned ordinance). In the present case, due to doubts as to the officer having committed the alleged act, the disciplinary spokesman, as part of informal preliminary proceedings and his powers, demanded explanations from the officer. In connection with the above, the content of the complainant's letter was made available to the officer in order to enable him to comment on the content of the allegations contained in the letter. Bearing in mind the above provisions, it should be stated that the actions taken by the CBA as a result of the submitted complaint, within the framework of which the complainant's personal data were processed, fell within the premises specified in Art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the protection of personal data, legalizing the processing of his personal data.

In addition, the processing of personal data is also permissible when it is necessary to fulfill legally justified purposes pursued by data administrators or data recipients, and the processing does not violate the rights and freedoms of the data subject (Article 23 (5) of the above-mentioned Act). In the doctrine and jurisprudence, it is emphasized that the following quotation: "(...) the term justified purposes, referred to in the above-mentioned provision of Art. 23 sec. 1 point 5 of the Act is an indefinite phrase and constitutes a general clause in a functional sense. In particular, it gives some kind of decision-making space, thanks to which the authority applying the law may, when making decisions, be guided by individual assessments of a specific situation, as well as certain rules of conduct not formulated in the law (...) "(P. Barta, P. Litwiński. Act on protection of personal data. Comment. Warsaw 2009, p. 228). At the same time, it should be borne in mind that the processing may not violate the rights and freedoms of the data subject. In the present case, it is unjustified to assume that the processing (disclosure) of the data of a person against whom one wants to initiate court proceedings would infringe his rights and freedoms, as it would lead to unjustified protection of such a person against possible liability for his actions, especially as he may in such court proceedings, make full use of their rights guaranteed, in this case by the provisions of the Code of Criminal Procedure.

Shifting the above into the present case, it should be pointed out that the disclosure of data, in view of the fact that the allegations raised by the Complainant were found unfounded, and that the officer submitted an oral application to the Head of the CBA Delegation in [...]. in the matter of disclosing the Complainant's personal data was justified by pursuing the rights before the court. An expression of this was the lodging of a bill of indictment with the private court against the applicant, as a

result of which the court, after conducting the proceedings, found the applicant guilty of the alleged offense under Art. 212 § 1 of the Criminal Code.

In addition, it should be noted that the Act on the Protection of Personal Data does not specify the manner of sharing personal data. This issue is left to the discretion of a specific administrator who, within the scope of his activities, may take any form that is most convenient for himself and the entities to whom the data is to be made available, taking into account, in particular, the nature of the data collected. The administrator provides answers in any form he chooses, including oral.

After re-analyzing the evidence collected in the case and finding no breach of the provisions on the protection of personal data by the Central Anti-Corruption Bureau, the President of the Personal Data Protection Office maintains his position expressed in the decision of [...] March 2018 (ref. [...]).

Regardless of the above resolution, I would like to inform you that as of February 6, 2019, the processing of personal data by competent authorities for the purpose of identifying, preventing, detecting and combating prohibited acts, including threats to public safety and order, as well as performing pre-trial detention, penalties, penalties enforcement measures and coercive measures have been regulated by the Act of 14 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125). However, pursuant to Art. 3 of this Act, its application to personal data processed in connection with ensuring national security, including as part of the implementation of statutory tasks of the Central Anticorruption Bureau, was excluded.

The party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw against the decision issued 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 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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