

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 17

April

2019

DECISION

ZSPU.440.121.2018

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) and Art. 12 point 2 and 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. 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) and art. 57 sec. 1 lit. a) and f) and art. 6 sec. 1 lit. c) and e) 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 of the EU L 119 of 04/05/2016, p. 1, as amended) after conducting administrative proceedings regarding the application of the Social Assistance Center W. to order S. to disclose the personal data of Mrs. BB in the scope of information on the amount and manner of payments for housing fees in the period from [...] March 2007 to [...] December 2010 for the premises at ul. Z. [...] in W. - President of the Personal Data Protection Office

refuses to accept the request.

Justification

The Office of the Inspector General for Personal Data Protection [currently the President of the Office for Personal Data Protection] received a request from Ośrodek Pomocy Społecznej W., hereinafter referred to as OPS, to order S., hereinafter referred to as S., to disclose the personal data of Mrs. B.B. in the scope of information on the amount and manner of payments for housing fees in the period from [...] March 2007 to [...] December 2010 for the premises at ul. Z. [...] in W. The complaint stated that Ms B.B. is a beneficiary of social assistance. By decision [...] of [...] April 2010, she was granted a permanent allowance from [...] April 2010 to [...] April 2013, and by decision No [...] of [...] June 2013 for the period from [...] June 2013 to [...] May 2016 as a person meeting the statutory requirements due to lack of source of income.

It was indicated that in the light of Art. 8 sec. 3 and art. 37 sec. 1 point 1 of the Act of 12 March 2004 on social assistance

(Journal of Laws of 2018, item 1508, as amended), "the fact of making payments on account of Mrs. BB's housing obligations by other persons requires assessment through the prism of the provisions cited. (...) The determination by the authority that (...) the beneficiary has income other than the declared income entitles OPS to initiate proceedings to amend or revoke the administrative decision granting the benefit to the detriment of the party without its consent (Article 106 (5) of the Act on social assistance) and to initiate proceedings to determine the amount of unduly collected reimbursable benefits and the date of their return (Article 104 (3) of the Act on social assistance). Tut. The center in order to verify the rights of Mr. B.B. to the permanent allowance, due to doubts as to her real life situation, on [...]. 06.2014 he applied to S. for information whether Ms B.B. pays the rent and when and in what amount. When the authority obtained the above information, on [...] .07. 2014 The Social Welfare Center notified Ms B.B. to initiate ex officio proceedings on entitlement to social assistance benefits in the form of permanent benefits in connection with new circumstances (...). In the course of the proceedings, it was also revealed that in the audited period from January 2012. until [...] .07.2014 rent payments were made by transfer from bank accounts not belonging to Ms B.B. In the light of the above-mentioned provisions of the Act, payments made by other persons should be classified as the beneficiary's income. During the above-mentioned proceedings, S. provided the social assistance body with all information necessary to determine the beneficiary's right to social assistance benefits, pursuant to Art. 105 of the Act (...). Based on the established data - by decision No. [...] of [...] .10.2014. the authority determined the amount of benefits unduly collected by Ms B.B. in the period from [...] .02.2012 until [...] .09.2014 In connection with the emergence of circumstances justifying the continuation of the proceedings as regards the earlier periods, OPS notified the Party about the extension of the scope of the examination of the case. In connection with the above, the letter of [...] .10.2014. (...) The center again asked S. (...) to provide information on Ms B.B. (...) ie an indication of the amount and manner of payments towards housing fees in the period from [...] .03.2007. until [...] .12.2010 At the above request, S. refused to provide information (...) ”.

The Inspector General conducted explanatory proceedings in the course of which he obtained explanations from S. They indicated that:

S. processes the personal data of Mrs. B.B. as a member of S. having a cooperative ownership right to the premises and therefore keeps a record of receivables due to service charges for the use of the premises and payments made.

S. explained in the case that "it does not process data in the scope of information about the place and method of payments towards operating fees as well as the owners of the accounts from which the payments are made. (...) records only the

payments made on the settlement accounts for service charges ". According to S., "information about making payments" does not fall within the scope of the concept of personal data.

By letter of [...] June 2014, OPS pursuant to Art. 105 paragraph. 1 of the Act on Social Assistance, asked S. "to provide information about Ms B.B. residing [...] or Ww. he pays the rent when payments are made and in what amount ". It was marked: "The above information is necessary for the needs of social assistance."

S., in a letter of [...] June 2014, informed about the amount of debt for the above-mentioned the premises as of [...] June 2014, provided the amount on which payments were made for service charges for the above-mentioned premises. It was added that Ms B.B. is a member of S., she has a cooperative ownership right to the above-mentioned a dwelling and the amount of service charges for that dwelling from [...] May 2014 was specified.

By decision [...] of [...] October 2014, President W. recognized the amount of the benefit paid in the form of Ms B.B.'s permanent allowance. for the period [...] February 2012 to [...] September 2014 as a benefit unduly received.

By letter of [...] October 2014, OPS pursuant to Art. 105 paragraph. 1 of the Act on Social Assistance, asked S. "to provide information about Ms B.B. residing [...] le an indication of the amount and manner of payments towards housing fees in the period from [...] .03.2007. until [...] .12.2010 ". Added: "The above information is necessary for the needs of social assistance."

In response of [...] November 2014, S. invoked Art. 105 of the Act on Social Assistance and raised: "The application of [...] October 2014 is inconsistent with the above-mentioned provisions as it does not concern information relevant to the award of benefits or their amount".

By letter of [...] November 2014, OPS referred to Art. 105 paragraph. 1 and art. 8 sec. 3 of the Act on Social Assistance as entitling OPS to obtain the requested data. It was indicated that Ms B.B. uses social welfare benefits. It has been added that S. is an organizational unit referred to in Art. 105 of the Act on Social Assistance.

In its reply of [...] December 2014, S. indicated that in the above-mentioned art. 8 sec. 3, the legislator used "an exhaustive list (closed catalog), in which no housing fees are mentioned. The above indicates that you have not sufficiently demonstrated that the data you requested are relevant to the outcome of the case ". Added: "The member of S. concerned did not consent to the disclosure of this type of information."

In the explanations given in the case, S. stated: 'OPS is asking S. to be informed about payments from [...] years ago, for the period from 2007. Therefore, there is no connection between the required data and Art. 105 of the Act on Social Assistance or

Art. 8 sec. 3 of the same act. In art. 8 refers to the income for the month preceding the submission of the application, and in art. 105 on information relevant for the decision on the award or amount of social assistance benefits. (...) Payments towards service charges are Ms B.'s expense and not income. (...) Ms B. does not obtain income from S. therefore S. is not the entity competent to document Ms B.'s income (...) in letters to S., OPS did not sufficiently demonstrate that the requested data, are relevant to the resolution of the case. (...) S.'s information that there were cases of payment to the service charges account from a bank account that is not owned by Ms B., it only creates the probability that she will obtain other income, but does not mean that Ms B has earned income ... (...) Mrs. B. claims that there were cases that she gave money to her sister so that she would pay maintenance fees for her apartment. Thus, this indicates a technical operation which does not constitute a gain of property and debt reduction for the payment of third parties, but only because of the own contribution. It is not surprising that such behavior of Ms B., given that [...]. Considering the above, OPS should first request statements from Ms B. and her sister. (...) Files kept by S. of service charges due and payments made for these charges and the balances of these settlements and do not contain other data such as e.g. information requested by OPS how (cash, bank transfer, from which account the funds were transferred to the account The SS does not record and process the data required by OPS No regulations require S. to enter into the records such details as the method of paying the fee (at the post office at which the bank, the person holding title to the premises or another person residing in the household or a third party). Due to the 3-year limitation period for claims, S. is not obliged to store documents for earlier periods. S. provided OPS with additional data for the years 2012-2014 other than those resulting from the records by searching for them in bank statements from that period and refused to provide information for the period from 2007. Providing information about the payment in a given month, the method of its payment at the post office or in the bank and from what account it would require the analysis of several dozen statements and about 1,500 operations for each month. (...) As a result, the data prepared for OPS would not be useful anyway, because in our opinion, making a payment to S. by giving money to her sister is a technical operation and not income, because it does not add any wealth. The data requested by OPS could not be used for the activities indicated by OPS in the provisions of Art. 105 paragraph. 1 of the Act on social assistance. Even if it was possible to establish the data of third parties making payments to Ms B., To S. does not have the authorization of these persons to process their data and therefore would not be entitled to transfer this data to OPS. (...) The information requested by OPS does not result from the provisions of Article 105 indicated by OPS, because they are not used to determine the amount of the benefit or the provisions of Article 8 because S.'s information

about the amount of payments does not constitute information about the amount of income of the OPS ward, i.e. Mrs. B.B. The permanent allowance is also not a housing allowance, in order to establish which an S.'s certificate of tax arrears is required. "

The President of the Personal Data Protection Office considered the following.

Pursuant to Art. 160 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 100, as amended), 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 Office (paragraph 1). From the paragraph 2 above the provision shows that the proceedings referred to in para. 1, is carried out 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 Act of June 14, 1960 - Code administrative proceedings (Journal of Laws of 2018, item 2096, as amended). The activities performed in the proceedings referred to in para. 1 remain effective (section 3). The Act of May 10, 2018 on the Protection of Personal Data - pursuant to Art. 176 - entered into force on May 25, 2018.

From May 25, 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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, page 1, as amended), hereinafter referred to as the GDPR.

This procedure - as initiated and not completed before May 25, 2018 - is conducted on the basis of the Act of August 29, 1997 on the protection of personal data with regard to the provisions governing the administrative procedure, and in the scope deciding on the legality of the processing of personal data - based on the GDPR.

The subject of the administrative procedure in this case is S.'s refusal to provide, at the request of OPS, the personal data of Ms B.B. in the scope of information on the amount and manner of payments for housing fees in the period from [...] March 2007 to [...] December 2010 for the premises at ul. Z. [...] in W.

The evidence in the case shows that Ms B.B. benefits from social assistance and is a member of S. due to the cooperative ownership right to premises in W. at ul. WITH. [...].

OPS as the basis for the request for the provision of the above-mentioned data indicated by Art. 105 paragraph. 1 and art. 8 sec. 3 of the Act on Social Assistance.

The principle of legality is regulated in Art. 5 sec. 1 lit. a) GDPR, which states that personal data must be processed lawfully,

fairly and in a transparent manner for the data subject ("lawfulness, fairness and transparency"). Art. 6 of the GDPR details and gives specific normative content to the above-mentioned basically. Due to the constitutionally regulated principle of legality, according to which public authorities (in the present case, OPS) act on the basis and within the limits of the law, Art. 6 sec. 1 lit. c) and e) GDPR. This provision implies that processing is lawful only in cases where - and to the extent that - c) processing is necessary to fulfill the legal obligation incumbent on the controller; 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.

OPS is an entity that carries out tasks in the field of social assistance, and Ms B.B. takes advantage of social assistance benefits. Art. 2 sec. 1 of the Act on social assistance provides that social assistance is an institution of the social policy of the state, aimed at enabling individuals and families to overcome difficult life situations which they are unable to overcome, using their own powers, resources and possibilities. Art. 15 point 1 of the above-mentioned of the Act stipulates that social assistance consists, in particular, in the granting and payment of benefits provided for by the Act.

According to Art. 8 sec. 1 above of the Act, the right to cash benefits from social assistance, subject to Art. 40, art. 41, art. 53a and art. 91, is entitled to: 1) a person running a single household whose income does not exceed the amount of PLN 461, hereinafter referred to as the "income criterion of a single person running a household", 2) a person in a family where the income per person does not exceed the amount of PLN 316, hereinafter referred to as the "income criterion per person in the family ", 3) the family whose income does not exceed the sum of the amounts of the income criterion per person in the family, hereinafter referred to as" the family income criterion "- with the simultaneous occurrence of at least one of the reasons listed in art. 7 points 2-15 or other circumstances justifying the granting of social assistance.

Art. 8 sec. 3 above of the Act stipulates that income is the sum of monthly revenues from the month preceding the submission of the application or, in the case of loss of income for the month in which the application was submitted, regardless of the title and source of obtaining them, unless the Act provides otherwise, less: 1) monthly personal income tax; 2) health insurance premiums specified in the provisions on health care benefits financed from public funds and social insurance specified in separate provisions; 3) the amount of alimony provided to other persons. Art. 8 sec. 4 above of the Act provides that the income determined in accordance with para. 3 does not include: 1) one-time cash social benefit; 2) a designated benefit; 3) material assistance of a social or incentive nature, granted on the basis of the provisions on the education system; 4) the value of the benefit in kind; 5) benefits to which an unemployed person is entitled under the provisions on employment promotion

and labor market institutions in respect of performing socially useful work; 5a) cash benefits and pecuniary aid referred to in the Act of March 20, 2015 on activists of the anti-communist opposition and repressed persons for political reasons (Journal of Laws of 2018, item 690); 6) income from the area of agricultural land below 1 conversion ha; 7) child benefit referred to in the Act of 11 February 2016 on state aid in bringing up children (Journal of Laws of 2017, item 1851 and of 2018, items 107, 138, 650, 1000 and 1076), and the educational allowance referred to in the Act of 9 June 2011 on supporting the family and foster care system (Journal of Laws of 2018, items 998 and 1076); 8) the cash benefit referred to in art. 8a sec. 1 of the Act of September 7, 2007 on the Pole's Card (Journal of Laws of 2018, item 1272; 9) cash benefit granted pursuant to Art. 9 of the Act of November 22, 2018 on the graves of veterans of the struggle for freedom and independence of Poland (Journal of Laws, item 2529); 10) a special award of the Prime Minister, awarded pursuant to Art. 31a of the Act of August 8, 1996 on the Council of Ministers (Journal of Laws of 2012, item 392, of 2015, item 1064, of 2018, item 1669 and of 2019, item 271). Art. 9 sec. 1 of the Act on Social Assistance provides that the income criteria are verified every 3 years, taking into account the results of the research on the threshold of social intervention. On the basis of paragraph 2 above of this provision, the Ordinance of the Minister of Social Policy of October 7, 2005 on the threshold of social intervention (Journal of Laws No. 211, item 1762) was issued, § 3 of which 3 point 2 states that the scope of the subsistence needs, taken into account when determining the threshold of social intervention, includes expenditure on housing.

S. is the administrator of the personal data of its members, including Mrs. BB, and processes them on the basis of the Act of December 15, 2000 on housing cooperatives (Journal of Laws of 2018, item 845, as amended) and the Act of September 16, 1982 Cooperative Law (Journal of Laws of 2018, item 1825). According to Art. 4 sec. 1 of the act on housing cooperatives, members of the cooperative who are entitled to cooperative rights to premises are obliged to participate in covering the costs related to the operation and maintenance of real estate in parts attributable to their premises, the operation and maintenance of real estate constituting the property of the cooperative by paying fees in accordance with the provisions of the statute. S. explained in the case that she processes personal data of Ms B.B. as a member of S. having a cooperative ownership right to the premises and therefore keeps a record of receivables due to service charges for the use of the premises and payments made. S. explained that "it does not process data in the scope of information about the place and method of payments towards operating fees as well as the owners of the accounts from which the payments are made. (...) records only the payments made in the clearing accounts for service charges".

The evidence in the case shows that the OPS issued a decision against Ms B.B. an administrative decision recognizing the amount of the benefit paid to her as a permanent allowance for the period [...] February 2012 to [...] September 2014 as a benefit unduly received. In the complaint to the data protection authority, OPS indicated that "[in] the disclosure of the circumstances justifying the conduct of the proceedings, the proceedings continued as regards the earlier periods", he requested S. to provide information concerning Ms B.B. residing [...] ie an indication of the amount and manner of payments towards housing fees in the period from [...] .03.2007. until [...] .12.2010 ".

Article 6 (16) of the Act on social assistance stipulates that a benefit unduly collected shall mean a cash benefit obtained on the basis of false information provided or failure to provide information about a change in material or personal situation. Art. 96 above of the Act stipulates that the obligation to reimburse expenses incurred on social assistance benefits rests with the person and family using social assistance benefits (section 1 point 1). The amount of the charges referred to in paragraph 1. 1, subject to return and the dates of their return shall be determined by way of an administrative decision (section 3).

Art. 105 sec. 1 above the Act provides that units of the public finance sector, including courts, the Police, the Social Insurance Institution, the Agricultural Social Insurance Fund and public administration bodies, as well as probation officers, employers, entities performing medical activities, kindergartens, schools, institutions, clinics and centers, referred to in Art. 2 points 1-8 of the Act of 14 December 2016 - Education Law (Journal of Laws of 2018, items 996, 1000 and 1290), universities, non-governmental organizations referred to in art. 3 sec. 2 of the Act of April 24, 2003 on Public Benefit and Volunteer Work, and the entities listed in art. 3 sec. 3 of this Act are obliged to immediately, but not later than within 7 days from the date of receipt of the request of the head of the social welfare center or a social worker, provide information that is relevant for the decision on granting or the amount of social assistance benefits, to determine the amount of payment for benefits under social assistance or for the verification of entitlement to social assistance benefits, the amount of these benefits or the payment for these benefits.

It should be emphasized that the above-mentioned a provision among entities that are obliged to provide a social welfare center with information that is important, inter alia, Housing cooperatives have not been mentioned to verify the entitlement to social assistance benefits, the amount of these benefits or the payment for these benefits.

It is worth pointing out at this point that the Supreme Administrative Court, in its resolution of April 11, 2005 adopted by a bench of seven judges (file reference number I OPS 1/05), stated that "housing cooperatives (...) are not" public authority ", i.e.

state or local government bodies or other entities performing public functions on their behalf. (...) There are no legal grounds to equate the activity of housing cooperatives with the performance of public tasks within the meaning of Art. 4 sec. 1 of the Act, since the activity of housing cooperatives is limited to the implementation of their basic goal, i.e. meeting the housing needs of members of that cooperative and their families, and therefore of a limited number of people associated in a given cooperative. Housing cooperatives do not belong to the public finance sector within the meaning of Art. 5 of the Act of November 26, 1998 on public finances (Journal of Laws of 2003, No. 15, item 148, as amended), nor are they entities implementing public finances within the meaning of Art. 6 of this Act "(also the Provincial Administrative Court in Gliwice in its decision of January 21, 2014 (file reference number IV SAB / GI 125/13).

Additionally, it should be noted that pursuant to Art. 4 of the Act on social assistance, persons and families using social assistance are obliged to cooperate in solving their difficult life situation.

The Provincial Administrative Court in Gorzów Wielkopolski, in its judgment of June 14, 2006 (file reference number II SA / Go 100/06), held that Art. 105 of the Act on social assistance "does not exclude the obligation to submit certain documents by a person applying for the benefit". The Provincial Administrative Court stated that in a situation where the person "does not provide the documents requested by the authority, he must take into account the negative consequences of such an action. (...) The realization of the rights of the recipient requires the fulfillment of certain conditions, which should be assessed in the context of the principles and objectives of social assistance ". In the judgment of February 12, 2012, the Provincial Administrative Court in Poznań (file no. II SA / Po 636/09) ruled: "Art. 4 of the Act on social assistance imposes on persons and families benefiting from social assistance the obligation for the person or family to cooperate with the social worker in solving a difficult life situation. On the other hand, the lack of cooperation or the refusal to conclude a social contract may constitute the grounds for refusal to grant the benefit. (Article 11 (2) of the Act) ". The Provincial Administrative Court added: "In the judgment of August 28, 2007, file ref. Act. I OSK 1802/06 the Supreme Administrative Court stated that (...) persons who apply for granting them public money are obliged to cooperate with the social worker in solving the difficult situation of the family (Art. 4 of the Act) under the pain of refusal to grant the benefit (Art. 11 section 2 of the Act) ".

In the light of the above, OPS is entitled to request the person receiving social assistance benefits (in the present case, Ms BB) to present documents concerning the information obtained by OPS about the facts that may affect the assessment of the applicant's financial situation, instructing that failure to present them within the prescribed period will or may result in the

obligation to return granted benefits. It should be noted that although the obligation to conduct the proceedings as to all relevant circumstances regarding the granting of social assistance benefits rests with the social assistance center, it may not exempt the person using the benefits from cooperation in the implementation of this obligation.

Art. 105 of the Act on Social Assistance should not be used to determine the income of the person using the benefits by the Social Insurance Institution, disregarding the direct tools specified in the above-mentioned provisions of this Act, which should be applied in the first place, instructing the applicant about the consequences resulting therefrom.

In the light of the above, there are no grounds to uphold OPS's complaint against S.'s refusal to disclose the personal data of its member, Ms B.B., who uses social assistance benefits provided by OPS.

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, 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 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.

2019-04-25