

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 29

November

2019

## DECISION

ZKE.440.69.2019

Based on Article. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) in connection with joke. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) 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. 6 sec. 1 lit. c) and f) and art. 57 sec. 1 lit. a) and f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons 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 May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2) after conducting administrative proceedings regarding the complaint of Mrs. BB about disclosing it personal data by S. in letters posted on notice boards and on the website at the address: [...], President of the Personal Data Protection Office discontinues the proceedings.

### Justification

The Office of the Inspector General for Personal Data (currently: the Office for Personal Data Protection) received a complaint from Ms BB (hereinafter: the Complainant) about the disclosure of her personal data by S. (hereinafter: the Association) regarding the name and surname, plot number and the amount of arrears in fees , in letters posted on notice boards in S.'s garden and on S.'s website, the complainant requested that her personal data from the notice boards and S.

In the course of the administrative proceedings, the President of the Personal Data Protection Office established the following facts:

1. In January 2017, information on arrears in fees for the users of these plots, including the data of the complainant and her husband, was posted on the notice boards located in the garden of S. and on the website of S. with the address: [...]. The scope of the data made available included the plot number and the amount of the arrears.

2. Information on arrears in fees for each of the [...] plots of land in S.'s garden, including the plot of the complainant and her husband, was removed both from the notice boards and from S.

3. At present, S. does not post on notice boards and does not provide information on any arrears in payments by their users on S.'s website, including information about the complainant and her husband.

After reviewing the collected evidence, the President of the Personal Data Protection Office considered the following.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Personal Data Protection Act, 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 Act of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended), in accordance with the principles set out in the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "kpa". At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on

From May 25, 2018, also 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 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are 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 on the basis of the Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed before the date of entry into force of the new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which "the public administration body assesses the actual state 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 the public administration authority issues an administrative

decision on the basis of the provisions of law in force at the time of its issuance "[Comment updated to the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 00.98.1071) M. Jaśkowska, A. Wróbel, Lex., EI / 2012].

In the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07, the Supreme Administrative Court 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 on the date of issuing the decision on the matter and whether it is done in a legal manner".

Referring the above to the established facts, it should be emphasized that the decisive factor for the decision that must be issued in the case in question is the fact that the Association does not currently publish on the notice boards located in the S. garden and on the website of S. : [...] the personal data of the complainant and her husband, i.e. the action being the subject of these proceedings is not allowed, about which S. informed the President of the Personal Data Protection Office. In this situation, these proceedings are subject to discontinuation pursuant to Art. 105 § 1 of the Code of Civil Procedure against its objectlessness. The term from art. 105 § 1 of the Code of Civil Procedure "proceeding for any reason has become redundant" because it includes situations where a party's request is out of date or has expired by operation of law. The proceeding in the case is groundless when there is no party to it or there is no object, i.e. there is no legal and factual basis for considering and settling the case "[Judgment of the Provincial Administrative Court in Kraków of January 30, 2019, I SA / Kr 1289 / 18, LEX no. 2622023)]. Due to the fact that the letter containing the Complainant's personal data is no longer available on the notice boards located in S.'s garden and on S.'s website, these proceedings should be discontinued.

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

Based on Article. 127 § 3 of the Code of Civil 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 Personal Data Protection (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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