

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 10

April

2019

DECISION

ZSPU.440.489.2018

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), Art. 6, and 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. MC, for the processing of his personal data by the Housing Cooperative, the President of the Office for Personal Data Protection refuses to accept the request.

Justification

The Office for Personal Data Protection received a complaint from Mr. M.C., (hereinafter: the Complainant), about the processing of his personal data by the Housing Cooperative, (hereinafter: the Cooperative).

In the content of his complaint, the complainant indicated that the quotation: "there has been a violation of the act on the protection of personal data in our cooperative since [...]. Data of residents are notoriously displayed in intercom boxes. On the part of the cooperative, no one has ever carried out a simple action among the residents, regarding the consent to place personal data on intercoms and the list of tenants. Many residents have followed up on this issue with little success. Moreover, the lists of tenants are renewed every six months (...)." Moreover, the Complainant pointed out that the quotation quoted: "being a member of a cooperative, I am denied access to the documentation of the cooperative, although the regulations of the cooperative state that each member may inspect it. The cooperative is hiding behind the Personal Data Protection Act ". The

complainant accused the Cooperative that "no one asked me to put my personal data on the tenants' lists or on the intercom, but the list of tenants is mentioned 1-2 times a year in the intercom. It is necessary to remove data from the inventory on your own (...)".

In connection with the above, the Complainant requested that the following quote: "The Cooperative should not include his personal data on any lists available to third parties. And also providing me with access to the documentation of the cooperative. "

In order to consider the application in question, the President of the Personal Data Protection Office conducted an explanatory proceeding, in the course of which he established the following factual circumstances.

The complainant is a member of the Cooperative because of his ownership right to the apartment he occupies. The Cooperative processes his personal data in the collection of members of the Cooperative and in the accounting documentation.

The explanations of the Cooperative show that the quotation: "information containing the names of the members of the Cooperative was and is on the intercoms only when the interested person expresses such a desire. In practice, it rarely happens that the name of the resident is displayed on the intercoms in the buildings of the Cooperative. Moreover, the Cooperative, in the submitted explanations, denied the complainant's allegation that information on intercoms was notoriously displayed, as well as with regard to the reference of the Cooperative's employees to the provisions on the protection of personal data in matters related to the finances of the Cooperative. "Every year, the balance sheet of the Cooperative is available at the registered office on the occasion of the general meeting of members, and it is also published in the National Court Register. On the other hand, if the author meant the debts of the members of the Cooperative towards the Cooperative, we would only practice correspondence with the debtors themselves, without using any form of disseminating such information. The Management Board of the Cooperative denies that Mr. C. [...] ever asked the Cooperative to provide him with his personal data contained in the Cooperative's files. We ensure, and this is a standard practice of the Cooperative, that each member of the Cooperative has access to their own personal data held by the Cooperative. It always happens at the seat of the Cooperative ".

In the files of the case in question there is a photo of the intercom located in the staircase of the building in which the complainant's apartment is located and the notice board in the staircase. The photo shows that the Complainant's personal

data is not there.

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 pointed out that as of 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 Inspector General for Personal Data 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 Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096) as amended). 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 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) .), hereinafter referred to as the GDPR, and in the procedural scope, the provisions of the Personal Data Protection Act of 1997.

In the present case, there are no grounds to conclude that there was a breach with regard to the processing of the Complainant's personal data to the extent challenged by him. In particular, the conducted explanatory proceedings did not provide evidence to confirm the Complainant's allegation that his personal data had been made available in the manner described in the complaint, or that the Cooperative refused the Complainant to see his personal data processed by the Cooperative.

The evidence in the case shows that the Complainant did not ask her to disclose his personal data contained in the Cooperative's files. Therefore, it should be noted that the President of the Personal Data Protection Office does not have any evidence to confirm the circumstances presented in the complaint. In the opinion of the President of the Office, the complainant based the complaint only on his suspicions, without presenting evidence to confirm the allegations made therein.

At this point, it should be pointed out that under the provisions on the protection of personal data, whether previously the Personal Data Protection Act of 1997, or currently under the GDPR, a natural person may request the administrator of his data only to view his personal data, and not to request access to any documentation at the disposal of the entity. The complainant demanded from the personal data protection authority to allow him access to the Cooperative's documents, which is beyond the competence of the President of the Office.

In the light of the above, it should be stated that the analysis of the evidence collected in the proceedings conducted by the President of the Office did not unequivocally and indisputably confirm that his personal data was disclosed by the Complainant, or that he was not provided with access to his personal data contained in the Cooperative's documentation. In such a situation, it should be emphasized that the public administration body may consider the facts of the case under consideration as established only on the basis of undoubted evidence and may not limit itself to making it plausible - unless the provisions of the Act of 14 June 1960 of the Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as the Administrative Procedure Code, stipulate otherwise (e.g. Article 24 § 3 of the Code of Administrative Procedure). As stated by the Supreme Administrative Court in the judgment of 9 July 1999 (III SA 5417/98), "the authority conducting the proceedings must strive to establish the substantive truth and, according to its knowledge, experience and internal conviction, assess the evidential value of individual evidence, the impact of proving one circumstances for other circumstances".

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.

2019-04-17