

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 20

March

2019

DECISION

ZSPR.440.493.2019

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 pursuant to Art. 160 sec. 1 and 2 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2018, item 1000, as amended) and art. 12 point 2, art. 22, art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922 and of 2018, item 138), in connection with Art. 6 sec. 1 lit. c and lit. f of the Regulation of the European Parliament and of the Council (EU) 2016/679 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 UE L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), in connection with Art. 105 paragraph. 4 and art. 105a paragraph. 4 and 5 of the Act of August 29, 1997 Banking Law (i.e. Journal of Laws of 2018, item 2187, as amended), after conducting administrative proceedings regarding the complaint of Mrs. N. D., residing in [...], for the processing of her personal data by A. S.A., based in W. and BIK S.A., based 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 received a complaint from Mrs. N. D., residing in [...], hereinafter referred to as the Complainant, for the processing of her personal data by A. S.A., based in W., hereinafter referred to as hereinafter referred to as the Bank, including their sharing and processing of the above-mentioned data by BIK S.A., with its seat in W., further BIK. In the content of the complaint, the complainant requested the deletion of her personal data with regard to the contract of [...] March 2003, identification number [...].

In the course of the investigation conducted in this case, the President of the Personal Data Protection Office established the following facts:

The complainant's personal data was obtained by the Bank in connection with the conclusion of the contract of [...] March 2003, no. [...], concluded with G. S.A., whose legal successor is A. S.A.

On [...] December 2008, the claim under contract No [...], to which the applicant was a party, was sold by the Bank to the company U. the contract.

The Bank processed the complainant's personal data pursuant to Art. 23 section 1 point 5 in connection with joke. 23 sec. 4 point 2 for the purpose of pursuing claims arising in connection with the performance of banking activities. After May 25, 2018, the basis for processing was Art. 6 sec. 1 lit. f of the Regulation of the European Parliament and of the Council (EU) 2016/679. The complainant's personal data was transferred to BIK in connection with the obligation resulting from the contract of [...] March 2003, no. [...] based on Article. 105 paragraph. 4 of the Banking Law.

Currently, the Bank and BIK do not process the complainant's personal data with regard to the agreement of [...] March 2003, no. [...] For the purposes of creditworthiness assessment and credit risk analysis pursuant to Art. 105a paragraph. 3 of the Banking Law.

In explanations before the Inspector General, BIK stated that the bill regarding the contract of [...] March 2003, no. [...]

Currently has the status of a closed account and is processed for the use of internal methods and other methods, pursuant to Art. 105a paragraph. 4 and 5 of the Banking Law.

In this factual state, the President of the Personal Data Protection Office considered the following.

On the date of entry into force of uodo 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. 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 Office for Personal Data Protection, pursuant to the Personal Data Protection Act 1997, in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. U. of 2018, item 2096), hereinafter referred to as Kpa. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective. From May 25, 2018, the provisions of 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 the repeal of Directive 95/46 / WE (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), hereinafter referred to as Regulation 2016/679.

When issuing an administrative decision, the President of the Personal Data Protection Office is obliged to adjudicate on the basis of the actual state of affairs at the time of issuing the decision. As the doctrine points out, "the public administration body assesses the facts 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 (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual status of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the binding legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws 00.98) 1071) M. Jaśkowska, A. Wróbel, Lex., EI / 2012).

In the judgment of May 7, 2008 in the case file ref. 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".

Regulation 2016/679 constitutes provisions on the protection of natural persons with regard to the processing of personal data and provisions on the free movement of personal data, and protects the fundamental rights and freedoms of natural persons, in particular their right to the protection of personal data (Article 1 (1) and (2) of Regulation 2016 / 679). This issue was adequately regulated by Art. 2 clause 1 of the act. In the light of the provisions of the aforementioned legal act, the processing of personal data is authorized when any of the conditions listed in art. 6 sec. 1 of Regulation 2016/679 (previously Article 23 (1) of the Act). These conditions apply to all forms of data processing listed in art. 4 point 2 of Regulation 2016/679 (Article 7 point 2 of the Act), including, in particular, their disclosure. These conditions are also equal to each other, which means that for the legality of the data processing process, it is sufficient to meet one of them.

Referring to the complainant's request regarding the legality of the currently ongoing processing of the complainant's personal data by both the Bank and BIK, it should be noted that the complainant's personal data was transferred to BIK with regard to information constituting banking secrecy in accordance with art. 105 paragraph. 4 of the Banking Law. Pursuant to this provision, banks may, together with banking chambers of commerce, establish institutions authorized to collect, process and make available to: banks - information constituting banking secrecy to the extent that this information is needed in connection with the performance of banking activities and in connection with the application of internal methods and other methods and

models referred to in Part Three of Regulation No 575/2013; other institutions legally authorized to grant loans - information constituting banking secrecy to the extent to which such information is necessary in connection with granting loans, cash advances, bank guarantees and sureties; credit institutions - information constituting banking secrecy to the extent necessary to assess the consumer's creditworthiness, as referred to in art. 9 of the Act of 12 May 2011 on consumer credit; loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit - on the basis of reciprocity, information constituting respectively banking secrecy and information provided by loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit, to the extent necessary to assess the consumer's creditworthiness referred to in art. 9 of this Act, and credit risk analysis. The legal basis for the processing of the complainant's personal data in this respect until May 25, 2018 was art. 23 paragraph. 1 point 5) of the Personal Data Protection Act, i.e. data processing was permissible when it was necessary to fulfill legally justified purposes carried out by data administrators or data recipients, and the processing did not violate the rights and freedoms of the data subject. From May 25, 2018, the legal basis for data processing in this regard is provided for in Art. 6 (1) of Regulation 2016/679, i.e. processing is lawful only in cases where - and to the extent that - at least one of the following conditions is met, from which the provision of point (a) f) states that processing is necessary for the purposes of the legitimate interests pursued by the administrator.

Therefore, in responding to the complainant's request for the deletion of her personal data as regards the contract of [...] March 2003, identification no. [...], it should be stated that, pursuant to Art. 23 section 1 point 5 in connection with joke. 23 sec. 4 point 2 of uodo, the Bank had a legal basis to process the complainant's personal data after the expiry of the obligation, ie until [...] December 2018. After May 25, 2018, the basis for processing was Art. 6 sec. 1 lit. f of the Regulation of the European Parliament and of the Council (EU) 2016/679. Regarding the processing of the Complainant's personal data by BIK, the legal basis for the processing of her personal data is art. 6 sec. 1 lit. c) of Regulation 2016/679, i.e. processing is necessary to fulfill the legal obligation incumbent on the administrator pursuant to art. 105a paragraph. 4 and 5 of the Act of August 29, 1997 Banking Law (i.e. Journal of Laws of 2018, item 2187, as amended). In connection with the above, the complainant's personal data will be processed for a period of 12 years from the date of expiry of the complainant's obligation, i.e. until [...] December 2020. Therefore, there was no necessary condition for the President of the Personal Data Protection Office to issue a decision ordering the restoration to lawfulness, therefore it is justified issuing a decision refusing to meet the data subject's request. 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.

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