

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 13

March

2019

## DECISION

ZSZZS.440.257.2018

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 as amended), Art. 18 sec. 1 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 May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000) and art. 6 (1) (c) and Art. 9 (2) (h) and (i) of Regulation (EU) 2016/676 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 EU L 127 of 23/05/2018, p. 2), hereinafter referred to as the GDPR, following administrative proceedings in on the request of P. Ł. to reconsider the case ended with the decision of the Inspector General for Personal Data Protection of August 1, 2017, refusing to accept the request regarding the complaint of P. Ł. and his minor son I. Ł., to process their data personal data by the County Sanitary Inspector in L. and by the Medicinal Entity [...], the President of the Office for Personal Data Protection

upholds the contested decision.

## JUSTIFICATION

The Office of the Inspector General for Personal Data Protection received a complaint from P. Ł, hereinafter referred to as the Complainant, about the processing of his personal data and the personal data of his minor son I. Ł. By the Healthcare Entity [...], hereinafter referred to as the Company and the County Sanitary Inspector in L. , hereinafter referred to as PPIS. The complainant questioned the legality of the processing of his and his son's personal data by PPIS, including the disclosure of his personal data and the personal data of minor I. Ł. By the Company to PPIS, and asked for the removal of deficiencies and for the complete cessation of making his data available to offices or persons by a medical facility without his consent and knowledge, determining whether and to which offices his data was sent after the medical facility made available and removed

his data from the documentation of the medical facility regarding the report and the illegal attachment to the report submitted to the Sanitary Inspection.

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

The complainant, as the legal custodian of his minor son, did not comply with the obligation to vaccinate him.

By letter of [...] July 2018, the Company sent a notification to PPIS about the Complainant's refusal to perform mandatory preventive vaccinations on his minor son.

The company provided PPIS with the personal data of the Complainant and his son in the scope of name, surname, address and date of birth, gender and PESEL number of the complainant's son, in connection with the Complainant's failure to comply with the vaccination obligation.

PPIS, in a letter of [...] August 2016, summoned the applicant to comply with the obligation to vaccinate his minor son.

The company, in the explanations of [...] October 2016, indicated as the legal basis for disclosing the personal data of the Complainant and his minor son, PPIS Art. 23 sec. 1 point 2 and 4 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922), hereinafter referred to as uodo'1997 .

PPIS in the explanations of [...] October 2016 indicated that it was processing the personal data of the Complainant and his son pursuant to Art. 5 sec. 1 point 1 (b) and art. 17 of the Act of 5 December 2008 on the prevention and combating of infections and infectious diseases in humans (Journal of Laws of 2013, item 947, as amended) [hereinafter: u.z.z.], and art. 25 sec. 1 point 2 and 3 of the Act of March 14, 1985 on the State Sanitary Inspection (Journal of Laws of 2015, item 1412) [hereinafter referred to as the entry], as well as § 13 of the Regulation of the Minister of Health of August 18, 2011 on mandatory preventive vaccinations (Journal of Laws of 2016, item 849, as amended) [hereinafter referred to as the Regulation].

On the basis of the evidence collected in the course of these proceedings, on August 1, 2017, the Inspector General for Personal Data Protection issued an administrative decision by which he refused to accept the Complainant's request. The authority found that the proceedings of both the Company and the PPIS were correct, as it was justified in Art. 23 sec. 1 point 2 and art. 27 sec. 2 point 2 u.o.d.o.'1997.

[...] in August 2017, the Complainant's Office for the re-examination of the case was received by the Office of the Inspector General for Personal Data Protection, issued within the statutory deadline, in which he demanded the quotation: "complete

cessation of sharing my and my son's data from the documentation of the medical facility," Pod Leczniczy [...], with documentation on the report and the attachment to the report submitted to the County Sanitary Inspector in L. [...] (...) ”.

After re-analyzing the evidence collected in the case, the President of the Office for Personal Data Protection, hereinafter referred to as the President of the Office, considered the following.

First of all, it should be noted that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000) pursuant to Art. 166 paragraph. 1 of this Act, the Inspector General for Personal Data Protection became the President of the Personal Data Protection Office, and pursuant to Art. 167 paragraph. 1 of the same act, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. On the other hand, pursuant to Art. 160 of the same 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 Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922), in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257). However, if the processing of personal data in cases initiated before May 25, 2018 is still ongoing, its correctness and legality is examined by the Office for Personal Data Protection based on the provisions of Regulation (EU) 2016/676 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, the General Data Protection Regulation (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Dz. EU L 127 of 23/05/2018, p. 2), hereinafter referred to as the GDPR. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

It should be pointed out that the complained process of processing the personal data of the Complainant and his minor son, consisting in the disclosure of personal data by the Company to PPIS, must be assessed in accordance with the provisions in force at the time of the occurrence of this event, while the current processing process carried out by PPIS should be assessed under the provisions in force on the date of this decision.

Taking into account the above and taking into account the complainants' requests for reconsideration of the case, two categories of personal data should be distinguished again, ie "ordinary" personal data and "sensitive" personal data, the exhaustive list of which was contained in Art. 27 sec. 1 u.o.d.o.'1997., And after May 25, 2018, the catalog of sensitive data is governed by the content of Art. 9 sec. 1 GDPR. Processing the first of the above-mentioned categories of personal data

(so-called ordinary data) was allowed only in the cases specified in art. 23 sec. 1 u.o.d.o.'1997. (now Article 6 of the GDPR).

The prerequisites for the legality of processing the second category of data, ie "sensitive" personal data, were set out in Art. 27 sec. 2 u.o.d.o.'1997. (now Article 9 (2) of the GDPR). Each of the conditions set out in the above-mentioned art. 23 sec. 1 and art. 27 sec. 2 u.o.d.o.'1997, and constituting the legality of the processing of personal data, was autonomous and independent. This means that meeting at least one of them constituted a lawful processing of personal data. It should be pointed out that pursuant to Art. 23 sec. 1 point 2 u.o.d.o.'1997, the processing of data without the consent of the data subject was permissible in the event that it was necessary to exercise the right or fulfill the obligation resulting from the law. However, according to Art. 27 sec. 2 point 2 u.o.d.o.'1997., The processing of "sensitive" data without the consent of the data subject was allowed in the event that a special provision of another act allowed the processing of such data without the consent of the data subject and created full guarantees of their protection.

At the same time, it should be noted that pursuant to Art. 5 sec. 1 point 1 point b of the Act on Public Procurement Law, persons staying in the territory of the Republic of Poland are obliged under the terms of this Act to undergo preventive vaccinations. In the case of a person who does not have full legal capacity, the responsibility for the fulfillment of obligations is borne by the person who exercises legal custody over the minor or the helpless, or the actual guardian within the meaning of art. 3 sec. 1 point 1 of the Act of November 6, 2008 on patient's rights and the Patient's Rights Ombudsman (Journal of Laws of 2017, item 1318, as amended). Moreover, pursuant to Art. 5 sec. 1 point 4 of the Uzz, persons residing in the territory of the Republic of Poland are obliged, under the terms of this Act, to: Environmental Protection Inspection, units referred to in art. 30 sec. 1, as well as reference centers and research institutes - necessary to conduct epidemiological supervision over adverse vaccine reactions; and c) bodies of the State Sanitary Inspection - necessary to supervise the implementation of the obligations referred to in art. 5 sec. 1 point 1-3 of the Act However, according to Art. 17 sec. 8 of the UZZ, persons carrying out preventive vaccinations keep medical records on compulsory protective vaccinations, including keeping immunization cards and making entries confirming the vaccination (point 1) and preparing reports on compulsory vaccinations and reports on the vaccination status of persons covered by preventive health care, which they provide the state poviatsanitary inspector (point 2). The regulation issued pursuant to Art. 17 sec. 10 of the Act on Public Procurement Law specifies in Annex 4 the template of the report on compulsory protective vaccinations carried out, according to which in the second section there is a list of persons avoiding preventive vaccinations.

It needs to be re-emphasized that Art. 17 sec. 8 point 2 of the Act on in connection with Art. 27 sec. 2 point 2 u.o.d.o.'1997. Is the basis for the transfer of personal data of the Complainant's minor son PPIS, including data on his health condition. On the other hand, the Ordinance only specifies organizational and technical issues allowing to systematize the circulation of the documents described in it. Therefore, it should be stated again that the Company, pursuant to Art. 17 sec. 8 point 2 of the Act on was obliged to inform about the failure to comply with the obligation to undergo mandatory protective vaccinations, due to the fact that the PPIS, pursuant to Art. 5 sec. 3 in conjunction joke. 10 sec. 1 point 3 of the AJDP in connection with joke. 5 sec. 1 point 4 point of the Public Procurement Law supervises the implementation of the obligation to undergo preventive vaccinations.

As indicated in the decision of the authority of August 1, 2017, in addition to the above-described right of the PPIS to obtain personal data of persons who do not comply with the obligation to vaccinate, the legislator provided for the possibility of data processing for this type of authorities, as part of supervising the implementation of the above-mentioned obligation. Therefore, referring again to the request expressed in the content of the complaint to cause the cessation of the processing of the complainant's and his son's personal data by PPIS, it should be noted that compliance with the statutory obligation to undergo protective vaccinations against infectious diseases resulting from Art. 5 sec. 1 point 1 point b of the UZZ, as well as the provision of information on its implementation, was secured by administrative coercion (the position was confirmed, among others, in the judgment of the Provincial Administrative Court in Kielce of February 21, 2013, file reference number II SA / Ke 7 / 13). According to Art. 3 § 1 in connection with joke. 2 § 1 point 10 of the Act of 17 June 1966 on enforcement proceedings in administration (Journal of Laws 0216, item 599, as amended) [hereinafter: upea], administrative enforcement applies to non-pecuniary obligations remaining in the jurisdiction government administration and local government bodies or submitted for administrative enforcement on the basis of a specific provision. Within the meaning of Art. 1a point 13 u.p.e.a. a creditor is an entity entitled to demand the performance of an obligation or its security in administrative enforcement or security proceedings, and in accordance with Art. 5 § 1 point 2 of the Act on entitled to request the performance by way of administrative enforcement of the obligation specified in art. 2 § 1 point 10 of the Act on there is a body or institution directly interested in the performance of the obligated obligation or appointed to supervise the performance of the obligation (similarly: the judgment of the Supreme Administrative Court in Bydgoszcz of June 9, 2015, file reference number II SA / Bd 432/15).

Therefore, it should be considered that the report drawn up pursuant to Art. 17 sec. 8 point 2 of the Act on should contain the

data necessary for the appropriate branch of the State Sanitary Inspection to send a reminder to comply with the vaccination obligation and to take further enforcement actions in the event of failure to fulfill the obligation. It should be emphasized that the data obtained by the PPIS and made available to it must also be sufficient to effectively enforce the vaccination obligation, under which the creditor (here: PPIS) draws up an enforcement title. The scope of these data is governed by Art. 27 of the Act on Enforcement Proceedings. Pursuant to Art. 27 § 1 point 2 and 3 of the Act on enforcement, the writ of execution should include the name, surname, address, PESEL number of the person liable and the content of the obligation to be enforced. Thus, it should be pointed out again that pursuant to Art. 5 sec. 1 point 4 point of the Act on Public Procurement Law, the PPIS supervises the implementation of the obligation of preventive vaccinations and defines their scope and date (Article 5 point 3 of the Act on Public Procurement Law). It should be recognized that the PPIS is also entitled to enforce the vaccination obligation through administrative enforcement proceedings. It should be noted that Art. 15 § 1 u.p.e.a. obliges the creditor to send the obligated person a reminder before commencing enforcement proceedings.

Taking into account all the factual findings made in the case, it should be once again stated that the provision by the PPIS Company of the personal data of the Complainant and his minor son in terms of the first names, surnames, address and PESEL number of the Complainant's son and the information that he was not subjected to preventive vaccinations was intentional and adequate, because it allowed PPIS to carry out supervision in the scope of the implementation of the preventive vaccination obligation.

Therefore, the Inspector General for Personal Data Protection correctly stated in the decision of 1 August 2017 that the processing of data on the health condition of the applicant's minor son by PPIS, in the scope of failure to perform compulsory preventive vaccination, was based on the premise specified in Art. 27 sec. 2 point 2 u.o.d.o.'1997, while in the case of the Complainant's data, in the condition indicated in art. 23 sec. 1 point 2 u.o.d.o.'1997. It should be emphasized once again that the PPIS, pursuant to Art. 15 § 1 u.p.e.a. in connection with and art. 5 sec. 2 u.z.z. was obliged to summon the applicant to fulfill his obligation.

However, referring to the ongoing data processing of the Complainant and his minor son, it should be noted that Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 specifies the obligations of the data controller, which include the processing of personal data in accordance with the conditions set out in in the Regulation. Art. 6 sec. 1 of the GDPR, according to which data processing is allowed only if one of the conditions set out in this provision is met. The catalog

of the premises listed in Art. 6 sec. 1 GDPR is closed. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are, in principle, equal, and therefore the fulfillment of at least one of them determines the lawful processing of personal data. As a consequence, the consent of the data subject is not the only basis for the processing of personal data, as the data processing process will be consistent with the Regulation also when the data controller demonstrates that another of the above-mentioned conditions is met. Regardless of the consent of the data subject (Article 6 (1) (a) of the GDPR), the processing of personal data is permitted, inter alia, when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (c) of the GDPR) GDPR). As indicated above, the PPIS has a legal obligation to supervise the implementation of the obligation to perform preventive vaccinations, therefore Art. 6 sec. 1 lit. c GDPR should be considered as the legal basis allowing the processing of "ordinary" data of the complainant and her minor daughter, such as names, surnames and address of residence.

Moreover, due to a special category of data (the so-called "sensitive" data), which are data on the health status of information on immunization of a minor, processed in the present case, Art. 9 GDPR, according to which the processing of sensitive data is allowed only if one of the conditions of Art. 9 sec. 2 GDPR. As possible grounds allowing for processing, this provision mentions: data processing for the purposes of preventive healthcare (...) on the basis of EU law or the law of a Member State, subject to par. 3 (h), processing is necessary for the public interest in the field of public health on the basis of European Union or Member State law (letter i).

In the case at hand, both Art. 9 sec. 2 lit h, in connection with the health prophylaxis, as well as art. 9 sec. 2 lit. and in view of the public interest in preventing infectious disease epidemics. Both of these grounds presuppose the existence of a legal basis in the form of a regulation at the level of the European Union or adopted by a Member State of the European Union. In this case, the provisions of the act on promoting and combating infections and infectious diseases in humans should be indicated. According to the above analysis, Art. 17 sec. 8 point 2 of the Act on should be considered as a provision allowing also the processing of sensitive personal data by PPIS (i.e. information on immunization of a minor). In addition, the legislator provided for the power to obtain information about persons in order to enable effective supervision over the implementation of the preventive vaccination obligation, in accordance with Art. 5 sec. 1 point 1 lit. b u.z.z. in connection with joke. 3 sec. 1 u.p.e.a. The above means that the processing of personal data by PPIS in the scope of information about undergoing preventive vaccinations is based on the premises specified in Art. 9 sec. 2 lit. h and i GDPR.

The decision is final. Based on Article. 13 § 2, art. 53 § 1 and article. 54 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302), the party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw (ul. Jasna 2/4, 00-013) against this decision. Warsaw), within 30 days from the date of delivery of this decision, via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). The entry fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs or the right to assistance

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