THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 16

April

2019

DECISION

ZSPU.440.71.2019 (II)

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and 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, as amended) in connection with joke. 12 point 2, art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), after conducting administrative proceedings regarding the application of Mrs. E.G. and Mr. A.G., both resident w O., to reconsider their complaint regarding the processing of their personal data by E. Sp. z o.o., based in B. and Bank P. S.A., based in W. decided by the decision of the Inspector General for Personal Data Protection of December 8, 2017 (ref .: DOLiS / DEC-1489/17) President of the Personal Data Protection Office upholds the contested.

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mrs. E.G. and Mr. A.G. residing w O., hereinafter referred to as the Complainants, regarding the processing of their personal data by E. Sp. z o.o. with its seat in B., hereinafter referred to as the Company, and Bank P. S.A. with its seat in W., hereinafter referred to as the Bank.

In the letter, the complainants indicated: “On our own behalf, we are filing a complaint against E. breaching the provisions of the Act (...) on the protection of personal data, in particular Art. 23 sec. 1 point 1-5 and paragraph 2 of the quoted act by making our personal data available to the Bank without our consent (...). E. (...) as the manager of the Housing Community (...) in O. is the administrator of our personal data as members of the above-mentioned community. The administrator, as follows from the declaration of (...) the administrator's employee, has set up an individual bank account at the Bank (...) with the number (...) in order to make payments on account of the so-called << junk tax >> due from our premises no. (...) at ul. (...) in O. The employee's declaration shows that this is an account intended for payment of fees only by us as members of the

community. Other members of the community have separate accounts for the purpose of donating the << rubbish tax >>. It is obvious, therefore, that in order to set up an account intended for us, the personal data administrator provided the bank with our personal data, i.e. name and surname and address. (...) We did not give the administrator consent to disclose personal data to another entity, ie the Bank (...). There is also no other condition for disclosing the data provided for in the provisions of the Act. We asked the Bank (...) and E. (...) to provide information as to whether and to what extent our personal data had been made available. Both entities denied the disclosure of the data. These positions, however, contradict the statement of employee E., who indicated that an individual bank account had been set up in our name ".

In the letters of [...] January 2016, the applicants indicated that they requested: "(...) reinstatement of the lawful state in the light of Art. 18 of the Act, i.e. the liquidation of an individual account opened without my knowledge and consent for the payments of << junk tax >> (...) Drawing appropriate consequences in accordance with applicable regulations towards persons who set up this account ".

In the course of the proceedings conducted in this case, the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) established the following facts:

The administrator of the personal data that is the subject of the complaint is Spóła Mieszkaniowa S. w O.

The Company processes the Complainants' personal data on the basis of contract No. [...] for the management of the common property located in O., concluded on [...] December 2011 in O. between the abovementioned A housing community represented by the management board of the community, and the company. The subject of the contract, specified in § 3 points 2 and 3, entitles the manager to represent the community and incur obligations on its behalf (sign contracts) providing real estate, among others supply of utilities, including sewage and garbage disposal, maintenance of order and cleanliness, as well as "representing the community to the bank when concluding a bank account agreement, as well as for the disposal of funds accumulated on the Community's bank account, intended to cover the Community's liabilities" .

In the explanations submitted to the Inspector General, the company also informed that: "The amended art. 2 clause 3 of the Act on maintaining cleanliness and order in municipalities of September 13, 1996 imposed on the housing community and the owners of premises the obligation to pay fees for the management of municipal waste and transfer it to the municipality (...) Mrs. E.G. based on Article. 6m of paragraph 1 c of the Act (...) on maintaining cleanliness and order in municipalities (...) made a declaration with a data processing clause ".

The company also explained: "In order to fulfill the statutory obligation imposed on the housing communities of their members, E., as the property manager, created, within the bank account already owned by the housing community with the Bank (...), one additional, auxiliary bank account for handling payments on account of fees for collection of municipal waste. The above account is an auxiliary account with the status of mass payments (...) In the correspondence with the applicants through the legal office representing them in O., the property manager discussed and explained in detail and explained the principles of operation of the premises created by him for individual owners of the premises ( payers) individual bank accounts. In the letter, the manager emphasized and indicated, inter alia, that he created the so-called virtual accounts did not require the creation of separate bank accounts for individual owners of the premises, and thus the transfer of personal data of their owners to the bank ".

In further explanations, the Company indicated: "As part of the meeting of the owners of premises forming a housing community in O. held on [...] .02.2016, the owners of the premises adopted a resolution on << Individual accounts of owners to pay fees for the premises >>. The adopted, majority resolution of the housing community was a consequence of the implementation of the mass payment service ".

In explanations submitted to the Inspector General, the Bank explained that: "E. (...) as the manager of the Housing Community S., on the basis of an agreement concluded with the Bank, he set up an account dedicated to handling mass payments. The Bank launched virtual accounts for this account, which are dedicated to individual members of housing communities, however, in this process, no personal data of community members was and is not transferred, therefore due to the performance of the contract concluded with E. ".

On December 8, 2017, the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) issued an administrative decision (ref. DOLiS / DEC-1489/17), by which he refused to accept the Complainants' request.

Subsequently, within the deadline, the authority received a letter from the Complainants of [...] December 2017, constituting an application for reconsideration of the case. In the content of the above-mentioned The complainants raised the following quotation: "(…) In our opinion, the case handler did not read the documents attached to the complaint at all and did not assess them in terms of content in order to establish the actual state of affairs. It is also strange, in the light of the above-mentioned documents, that we - the complainants - are accused of not having any evidence to support our arguments, and these are only

assumptions. (...). After all, for over a year we were forced to make payments to an unlawfully opened bank account, and this entailed additional costs for us related to running it by a bank that never does anything> for free <. As I have checked in other banks (...), to set up individual bank accounts, the consent of the person to whom the account is to apply is required, and such consent has never been expressed by any of us (...) ". Finally, the Complainants added the following quotation: "(...) in our opinion, it is also interesting that, as a result of our complaint to GIODO, E. liquidated all accounts relating to> junk tax <and currently the owners of the premises pay only one bank account ( …) ".

After re-examining all the evidence gathered in the case, the President of the Office for Personal Data Protection considered the following.

At the outset, it should be noted that on May 25, 2018, with the entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), the General Office The Personal Data Protection Inspector has become the Office for Personal Data Protection (Article 167 (1) of this Act). 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, 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 rules set out in the Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended). All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1-3) of the Act of May 10, 2018 on the protection of personal data).

Pursuant to Art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data, in the event of a breach of the provisions on the protection of personal data, ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, and in particular: 1) deletion deficiencies, 2) supplementing, updating, rectifying, disclosing or not making personal data available, 3) applying additional security measures for the collected personal data, 4) suspending the transfer of personal data to a third country, 5) securing data or transferring it to other entities, 6) deletion of data personal.

Pursuant to Art. 57 sec. 1 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 the protection of data) (Journal of Laws EU.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), hereinafter referred to as the GDPR, without prejudice to other tasks set out pursuant to this Regulation,

each supervisory authority on its territory monitors and enforce the application of this Regulation (point a) and handle complaints lodged by the data subject or by a body, organization or association in accordance with Art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to continue investigations or coordinate actions with another supervisory authority (point f).

Referring again to the complainants' allegation that their personal data was made available by the Company to the Bank, it should be noted that this allegation was not confirmed in the evidence material of the case. It should be pointed out that the Company, in the explanations addressed to the authority, stated that the creation of the so-called virtual accounts to the current bank account of the Housing Community in O. did not require the creation of separate bank accounts for individual owners of the premises, and thus the transfer of personal data of their owners to the Bank. Similarly, the Bank in the above-mentioned in a letter of [...] May 2016 addressed to the authority, stated that the Company as the manager of the above-mentioned On the basis of an agreement with the Bank, the Communities established an account dedicated to handling mass payments, to which the Bank launched virtual accounts dedicated to individual members of the above-mentioned Community. However, as emphasized by the Bank, in this process, no personal data of the members of the abovementioned Community, therefore the Bank has not obtained and does not process the personal data of the Complainants.

Thus, it should be pointed out once again that in the present case there are no grounds to conclude that the Company disclosed the personal data of the Complainants to the Bank in the manner described in the complaint. It should be noted that the applicants based their complaint only on suspicions and did not provide the authority with any evidence to substantiate the circumstances presented in the complaint. Their submission of letters received from the Community with an individual bank account number for payments of the "junk tax" is not a proof that their personal data has been provided by the Company to the Bank, but only evidence that there was indeed a case of opening additional virtual accounts dedicated to individual members of the Community. However, this circumstance was beyond dispute in the case.

The complainant in the above-mentioned the request for reconsideration of the present case did not raise any new circumstances that could have had the effect of uprooting the contested decision by the authority. On the other hand, the allegation of the liquidation of individual bank accounts by the Company is irrelevant to the contested decision of the present case, because in the course of the first-instance proceedings it was established that the personal data of the Community

members, including the data of the Complainants, had not been made available for the opening of these accounts. It should be emphasized once again that the Bank stated that due to the questioned process of opening individual bank accounts by the Company, it did not obtain or process any personal data of the Complainants. In view of the cited statements of both the Company and the Bank, it is difficult to conclude that in the case the disclosure of their personal data was questioned by the Complainants.

Thus, in the case there were no grounds for the application of Art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data due to the lack of evidence confirming that there has been a breach of the provisions of this Act.

Therefore, the contested above the decision of 8 December 2017 remains in force as lawful.

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

The decision is final. Based on Article. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000) in connection with joke. 21 sec. 2 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 joke. 13 § 2, art. 53 § 1 and art. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2017, item 1369, as amended), the party dissatisfied with this decision has the right to lodge a complaint with the Provincial Administrative Court in Warsaw within 30 days from the day it was delivered to its side. The complaint is lodged through 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 the right of assistance, including exemption from court costs.

2019-04-17