

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 11

March

2019

DECISION

ZSOŚS.440.52.2018

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), art. 12 point 2, art. 22, art. 23 sec. 1 point 1 and 2, art. 27 sec. 1 and 2 point 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 Art. 100 sec. 1 and 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), after conducting administrative proceedings regarding the complaint of Mr. JC, to disclose it personal data by the Provincial Police Commander in P. other entities,

I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Mr. JC, hereinafter referred to as the Complainant, about the transfer of his personal data by the Provincial Commander of the Police in P., hereinafter referred to as "KWP", to the Polish Hunting Association, which initiated further disclosure his (sensitive) personal data to other authorities and natural persons.

In the content of the complaint, the complainant argued that he is seeking to remove the deficiencies related to the sharing and transfer of personal (sensitive) data concerning his person and data infringing the image of the company P. Sp. z o.o. and deletion of these data from the collections held by the Police authorities and the authorities of the Polish Hunting Association pursuant to 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).

It should be noted here 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, as amended), i.e. May 25, 2018, the General Office The Personal Data Protection Inspector has become the Office for Personal Data Protection. Pursuant to Art. 160 of this Act, the proceedings conducted by

the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, were 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 in accordance with the principles set out in the Code of Civil Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective. However, on February 6, 2019, the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125) entered into force, which in Art. 100 states that the proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry into force of this Act, are conducted on the basis of the existing provisions, i.e. the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Act".

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office determined the following.

The complainant's personal data are processed by the Provincial Police Commander in P., inter alia, in connection with the necessity to fulfill the legal obligation incumbent on the administrator, resulting from art. 27 sec. 2 of the Act of May 21, 1999 on weapons and ammunition (Journal of Laws of 2017, item 1839, as amended), because the complainant is a member of the Polish Hunting Association, as a hunter has firearms and is listed in the National Information System Police (hereinafter KSIP) application "Arms and road traffic" and in connection with Article 15 of the Act of April 6, 1990 on the Police (Journal of Laws of 2018, item 1669) in connection with offenses in road traffic.

As it results from the explanations of the Provincial Police Commander in P., the Head of the Administrative Proceedings Department of the Provincial Headquarters in P., fulfilling the obligation resulting from the content of Art. 18 sec. 1 items 2-4 of the Act on Weapons and Ammunition, sought to confirm or deny the facts contained in the anonymous letter concerning the Complainant, which were received by the Provincial Police Headquarters in P., in order to possibly implement the procedure for withdrawing his firearms license. Therefore, he asked the District Board of the Polish Hunting Association in P. to prepare an opinion on the Complainant, taking into account the opinion of his parent club, ie Military Hunting Association No. [...] in P., also sending a copy of the received anonymous letter. At the same time, he asked the Commander of the Police Station in J. to prepare an opinion on the applicant. He also noted that the competent police authority revokes the firearms license of people with mental disorders, addicted to psychoactive substances or alcohol. In the opinion of the Voivodship Commander of

the Police in P., such opinions were necessary to make a decision on the initiation of a possible administrative procedure aimed at withdrawing a firearms license from the Complainant in the event of confirmation of the facts cited in an anonymous letter. As the Commander emphasized, an important role in this case was played by the opinion on the behavior of the applicant related to hunting, i.e. possible allegations of poaching or alcohol abuse, which circumstances were assessed by the authorities of the Polish Hunting Association. In the opinion of the Commander, it was also appropriate to indicate to the Polish Hunting Association the circumstances which require verification of the information contained in the anonymous letter.

On the other hand, from the explanations provided by the Chairman of the District Board of the Polish Hunting Association in P., hereinafter referred to as the "Chairman of the ZO PZŁ", it appears that after receiving [...] January 2018 a letter from the Provincial Police Headquarters in P. Administrative Proceedings Department with a request for preparation of the opinion on the Complainant, the letter with the attached anonymous document was handed over to the following quotation: "to the hands of the President of the Military Hunting Association No. [...], hereinafter referred to as the" President of the Military Hunting Association ", who, after seeking information during the meeting of the Military Hunting Association Board No. [.. .] was to issue an opinion concerning the applicant.

In connection with the above, the President of the WKŁ explained that on the day of receiving the letter with a request for an opinion on the Complainant, he asked the members of the Board of the Society, the accountant and the Chairman of the Audit Committee to provide all information concerning the Complainant in order to verify the information contained in the anonymous letter and issue an impartial opinions about him.

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

Pursuant to Art. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), personal data may be processed if it serves the public good, the good of the data subject or the good third parties. Pursuant to Art. 7 point 2 of this Act, data processing shall mean any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially these. which are performed in information systems. It should be noted that the Act applies to the protection of personal data of natural persons in accordance with Art. 2 clause 1 of the Act, and not the image of a legal entity - the company P. sp.z o.o. because this activity is subject to separate provisions of law and the President of the Office for Personal Data Protection is not authorized to make an assessment in this

respect.

Similarly, the issue of infringement of personal rights protected under Art. 23 of the Act of April 23, 1964 (Journal of Laws of 2018, item 1025, as amended) may not be resolved by the personal data protection authority, as these matters are considered by the competent common court.

Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, allows the processing of personal data if it is necessary to exercise the right or fulfill an obligation resulting from a legal provision.

The legal basis for the processing of personal data of persons against whom the Police proceedings were conducted is Art. 20 paragraph 1 of the Police Act of April 6, 1990 (Journal of Laws of 2016, item 1782, as amended), hereinafter referred to as the "Police Act". Police, may obtain information, including secretly, collect, check and process it. Pursuant to Article 20 (2a) of this Act, the Police may download, obtain, collect, process and use information, including personal data, in order to perform statutory tasks. inter alia, about persons suspected of committing crimes prosecuted by public prosecution, also without their knowledge and consent.

As noted by the Supreme Administrative Court in Warsaw in the judgment No. II OSK 885/16 of January 26, 2018, the issue of psychophysical ability to possess a weapon is not indifferent from the point of view of safety and public order, due to the possible consequences of the use of weapons. So there can be no doubt that a person is fully mentally and physically capable of disposing of it. On the other hand, the purpose of this obligation, due to the fact that firearms are a dangerous tool, is to protect security and public order, a threat to which may be created by persons who do not have such capacity. It was emphasized that, inter alia, in the case of firearms owned by a party, the legislator has established in advance the obligation to periodically submit medical and psychological certificates, regardless of whether or not there are any doubts as to the health of the gun owner. However, in the event of such doubts, the Police authority may oblige the holder to undergo the examination immediately and present the decisions issued on their basis. This permission is granted to the authority by the provisions of Art. 15 sec. 5 of the Act of May 21, 1999 on weapons and ammunition (Journal of Laws of 2017, item 1839, as amended), i.e. a legal provision "independent" from the disposition of Art. 15 sec. 4 of this act. The obligation imposed on the Police in Art. 1 clause 2 of the Police Act, especially in the form of protection of public safety and order, including ensuring peace in public places and in means of public transport and public transport, in road traffic and in waters intended for general use, as well as detecting crimes and offenses and prosecuting their perpetrators . On the other hand, as is clear from the wording of Art. 19

paragraph 1 point 1 of the Act on weapons and ammunition, a person possessing a weapon in accordance with the provisions of the Police Act, and in the case of professional soldiers, the Military Police, may, upon receipt, collect the weapon and ammunition and documents confirming the legality of possession of a firearm in the event of disclosure of the circumstances referred to in Art. 18 sec. 1 points 1-2 and 4 and sec. 5, in the field of firearms, i.e. where the holder of the firearm does not comply with the conditions laid down in the license for the firearms referred to in article 1. 10 sec. 7; belongs to people with mental disorders, referred to in the Act of 19 August 1994 on the protection of mental health (Journal of Laws of 2017, item 882), or with significantly reduced psychophysical fitness; showing significant disorders of psychological functioning; addicted to alcohol or psychoactive substances; who do not have permanent residence in the territory of the Republic of Poland; posing a threat to oneself, public order or safety; moves with an unloaded weapon or carries a weapon in a state after the use of alcohol, narcotic drugs, psychotropic substances or a substitute. Moreover, with Art. 27 sec. 2 of the Act, it is obligatory to keep a register by the Police Commander in Chief, containing personal data, inter alia, of persons holding a firearms license and official information and opinions about these persons drawn up in connection with firearms license issues, as well as control of the performance of obligations under the provisions of the above-mentioned of the Act (section 1). Bodies established to prosecute crimes, including the Police, use various sources of information on crimes committed, including anonymous reports. Information of this type is not always exhaustive and precise enough for the authority conducting the criminal proceedings to assume that there is a justified suspicion that a crime has been committed. In such a situation, it is necessary to carry out the screening procedure referred to in Art. 307 § 5 of the Act of June 6, 1997, Code of Criminal Procedure (Journal of Laws of 2018, item 1987, as amended), the purpose of which is precisely to determine whether there is a justified suspicion of a crime. These proceedings are limited only to checking the validity of the mere suspicion of a crime. Pursuant to § 6 sec. 1 point 1 of Guidelines No. 3 of the Police Commander in Chief of August 30, 2017 on the performance of certain investigative activities by police officers (Journal of Laws of the Police Headquarters of 2017, item 59), in the vetting proceedings referred to in Art. 307 of the Code of Criminal Procedure, the following activities may be performed, in particular: sending a written request to the appropriate institution to provide information on a specific fact or event within a specified period.

Therefore, it is undisputed that the Police authorities acted properly in this regard, especially taking into account the scale of threats that could result from the possession of a weapon by a person, perhaps not authorized for this purpose, anymore.

On the other hand, the handing over of the letter directly to the President of the MMB by the Chairman of ZO PZL in the

above-mentioned also cannot be treated as inconsistent with the applicable provisions of law. Similarly, sending by the President of the WKŁ a request for an opinion to the members of the Board of the Society, the accountant and the Chairman of the Audit Committee, along with the attached anonymous letter, was intended to implement the instruction received from the Police authority.

Pursuant to Art. 18 of the Personal Data Protection Act. The President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: removal of deficiencies; deletion of personal data only in the event that it determines that there has been a breach of its provisions. It follows, therefore, that the authority may order the removal of deficiencies by ordering the deletion of data only after prior assessment of the behavior of the data controller, who previously unjustly refused to provide them, remained inactive despite requests addressed to him. Therefore, the role of the authority is to examine whether the controller of personal data addressed with the request for disclosure of data properly responded to it. It is the personal data administrator (in this case the Voivodship Commander in P., the Chairman of ZO PZL and the Chairman of the WKT) who is obliged to investigate whether there are legal grounds to take action resulting in the disclosure of personal data, and the President of the Personal Data Protection Office to control this process. How was the disclosure of personal data based on art. 23 sec. 1 point 2 of the Act, ie when it is necessary to exercise the right or fulfill an obligation resulting from legal provisions, and in relation to "sensitive data" pursuant to Art. 27 sec. 2 of the Act.

Therefore, in the present case, there was no breach of the provisions on the protection of personal data by making the Complainant's personal data available without a legal basis to unauthorized persons in order to issue an opinion about the Complainant, so the data protection authority has no grounds to issue a decision ordering the restoration of the lawful state, in the light of Art. 18 sec. 1 of the Act, and to issue a decision ordering the removal of the complainant's personal data from the files held by the Police authorities and the authorities of the Polish Hunting Association. It should be clarified that in the circumstances of the case at hand there are no grounds to formulate any order to the above-mentioned bodies performing the obligations provided for by law.

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

The decision is final. Based on Article. 9 sec. 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125) in connection with art. 13 § 2,

art. 53 § 1 and article. 54 § 1 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302, as amended), from this decision, the party has the right to lodge a complaint with the Provincial Administrative Court, 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 the right to assistance, including exemption from court costs.

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