

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 11

April

2019

## DECISION

ZSPU.440.840.2018

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. 7 sec. 1 in conjunction of 60 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) and Art. 6 sec. 1 lit. f) and art. 57 sec. 1 lit. a) and f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC ( General Data Protection Regulation) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), after conducting administrative proceedings regarding the complaint of Mrs. BG, correspondence address: [...] L . [...], Mr. PG, residing in in W. [...] and Mrs. K. G., residing in in W. [...], for unauthorized disclosure of their personal data by the Housing Cooperative. based in W. [...], President of the Personal Data Protection Office

refuses to accept the request.

## JUSTIFICATION

The Office for Personal Data Protection received a complaint from Ms B. G., correspondence address: [...] L. [...], acting on her own behalf and also as an attorney for her adult children: Mr. P. G., residing in in W. [...] and Mrs. K. G., residing in in W. [...], hereinafter also referred to as the Complainants, for unauthorized disclosure of their personal data by the Housing Cooperative with its seat in W. [...], hereinafter also referred to as the Cooperative.

The complainants questioned the legality of the Cooperative's operation consisting in disclosing their personal data contained in the information on the amount of fees for a flat no. [...] located in W. [...], to the person to whom the above-mentioned the premises has been rented for the purposes of applying for a housing allowance. In the opinion of the Complainants, it was illegal to disclose all the information contained in the above-mentioned a document of their personal data - i.e. both information on names and surnames, tenant code, as well as the amount of fees for the above-mentioned a residential unit with a

breakdown into its component parts. As emphasized by Ms B. G. quoting: "(...) the actions of employees [...] (...) resulted in the violation of the provisions of the GDPR regulation by unauthorized disclosure to third parties, among others personal data of my children (who are not a party to the lease agreement), my financial settlements with the Cooperative and the tenant's identification code (...) ”.

On the basis of the evidence gathered in the present case, the following facts have been established.

The cooperative processes the personal data of the Complainants as persons who have a joint ownership co-operative right to a flat no. [...] Located in W. [...].

On [...] July 2018, the Cooperative made the access to the Complainants' personal data available to the tenant of the above-mentioned a dwelling, hereinafter also referred to as the Lessee, in connection with his application for a housing allowance. As explained by the Cooperative quotation: "(...) after verification of the right to obtain data relating to the premises located in W. [...] and confirmation of the conclusion of the lease agreement for the premises in question, the applicant for housing allowance was provided with data (...) the premises, names and surnames of the co-owners of the premises in question, the address of the premises, the amount of fees for the premises, the tenant's code, the individual number of the account for charges for the premises, the name of the housing cooperative, the area of the premises (...). and thus their right to apply for a housing allowance (...) ”(letter of the Cooperative of [...] November 2018 in the case file). The cooperative also clarified the quotation: "(...) The tenant of the premises located in W. [...] when requesting the data required by law to apply for a financial allowance, presented the original copy of the lease agreement concluded with him and signed with the owner of the premises (... ) The data contained in the original copy of the lease agreement was verified with the data contained in the application submitted [...] by the tenant for a housing allowance and were identical (...) ”(the Cooperative's letter of [...] January 2019 in the case file).

The case file includes a document of [...] July 2018, issued by the Cooperative for the benefit of the Lessee, which is a list of fees for the above-mentioned the premises as of [...] July 2018, which contained the complainants' questioned personal data - in the scope including their names and surnames, the address of the premises belonging to them (premises for which the Complainants jointly have a cooperative ownership right to of the apartment), information about the amount of fees for this apartment with a breakdown into component parts and information about the "Tenant's code". The cooperative also submitted to the files of these proceedings a copy of the application for a housing allowance - on the official model, filled in by the Lessee

and confirmed with the seals of the real estate administrator.

After reviewing all the evidence gathered in the case, the President of the Personal Data Protection Office, hereinafter also referred to as the President of the Personal Data Protection Office, considered the following.

The President of the Personal Data Protection Office is the competent authority for the protection of personal data and the supervisory authority within the meaning 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, repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws EU L.2016.119.1 and Journal of Laws EU L.2018.127.2), hereinafter referred to as GDPR (Article 34 par. 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), hereinafter referred to as the Act). The President of the Personal Data Protection Office (UODO) conducts proceedings regarding infringement of provisions on the protection of personal data (Article 60 of the Act), and in matters not covered by the Act, administrative proceedings before the President of the Personal Data Protection Office, in particular those regulated in Chapter 7 of the Act - proceedings on infringement of data protection provisions personal data, the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter also referred to as the Code of Administrative Procedure (Article 7 (1) of the Act).

Pursuant to Art. 57 sec. 1 GDPR, without prejudice to other tasks under this Regulation, each supervisory authority on its territory shall monitor and enforce the application of this Regulation (point a) and handle complaints brought by the data subject or by an entity, organization or association pursuant to art. 80, conducts investigations on these complaints to an appropriate extent and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to pursue further investigations or coordinate actions with another supervisory authority (point f). The instruments for the implementation of the tasks provided for in Art. 57 sec. 1 GDPR are set out in particular in Art. 58 sec. 2 GDPR, remedial rights, including the possibility to: order the controller or processor to comply with the data subject's request resulting from the rights under this Regulation (Article 58 (2) (c)), order the controller or processor adapt the processing operations to the provisions of this Regulation, and, where applicable, the manner and time limit (Article 58 (2) (d)). GDPR defines data processing as an operation or set of operations performed on personal data or sets of personal data in an automated or non-automated manner, such as collecting, recording, organizing, organizing, storing, adapting or modifying,

downloading, viewing, using, disclosing by sending, disseminating or any other type of sharing, adjusting or combining, limiting, deleting or destroying (Article 4 (2) of the GDPR).

In turn, art. 6 sec. 1 GDPR specifies the basic conditions for the admissibility of data processing (the admissibility of each activity falling within this concept), allowing their processing only in cases where - and to the extent that - at least one of the following conditions is met: the data concern has consented to the processing of its personal data for one or more specific purposes; b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; d) processing is necessary to protect the vital interests of the data subject or of another natural person; e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; f) processing is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular when the data subject is a child.

Pursuant to the provisions of the Act of June 21, 2001 on housing allowances (Journal of Laws of 2017, item 180, as amended), the housing allowance, subject to Art. 7 sec. 3 and 4, are available in particular to tenants and sub-tenants of residential premises (Article 2 (1) (1)). The housing allowance is granted by the commune head, mayor or city president, by way of an administrative decision, at the request of the person entitled to receive it (Article 7 (1) of the Housing Supplements Act), and the template for this application is specified in the provisions of the Regulation of the Council of Ministers of December 28, 2001 on housing allowances (Journal of Laws of 2001, No. 156, item 1817, as amended), issued on the basis of statutory delegation under Art. 9 sec. 1 point 3 of the Act on Housing Supplements. As it results from the provisions of the above-mentioned of the regulation, a person applying for a housing allowance should submit to the office of the competent commune an application for a housing allowance, according to the official formula (§ 5 point 1; the template of this application is included in Annex 1 to the regulation in question) and a declaration on the amount of household income, according to the official model (§ 5 point 2). In the context of determining the amount of the housing allowance, it is necessary to examine the expenses incurred by the person applying for the housing allowance - i.e. periodic benefits incurred by the household in connection with the occupation of a dwelling (Article 6 (1), (3) and (4) of the Act on housing allowances). For this reason, also in the official form of the application for housing allowance, there are sections in which the applicant provides in particular "the

total amount of housing expenses for the last month (according to the documents presented)", and the accuracy of this information requires confirmation from "the administrator home "(point 12 of the application).

Referring the above to the circumstances of the case at hand, it should be noted that providing the Tenant with the premises belonging jointly to the Complainants, their personal data in terms of information on the amount of monthly fees payable for this particular premises with a breakdown into component parts, undoubtedly constituted an activity carried out by the Cooperative in the area of objectives resulting from from legally justified - in the light of the provisions governing the application, award and calculation of the housing allowance - interests pursued by the Lessee (as a third party within the meaning of Article 4 (10) of the GDPR, according to which the third party is a natural or legal person, public body, entity or entity other than the data subject, controller, processor or persons who - under the authority of the controller or processor - may process personal data). At the same time, it cannot be concluded that the access to the said data in question was prevented by the interests or fundamental rights and freedoms of the Complainants, which were superior to the Lessee's interests, which required protection of their personal data. The adoption of such an assumption would, in fact, prevent the Lessee from effectively applying for a housing allowance, rendering his rights in this respect illusory. For the same reasons, the argument put forward by Ms B. G., which seems to claim that information of this kind could be provided by the tenant of the premises, at best, cannot be accepted. Such a position would make the possibility of an eligible person applying for a housing allowance (the tenant of the premises) dependent on the will of the owner of the premises. In addition, it should be emphasized that according to the official model of the application for housing allowance, the truthfulness of the information provided by the applicant for such allowance regarding the amount of expenses incurred by the person applying for housing allowance and their individual parts is confirmed by the house manager (point 12 of the annex to the regulation on housing allowances ). Consequently, making the above-mentioned information by the Cooperative for the Lessee was an action authorized in the context of art. 6 sec. 1 lit. f) GDPR.

The same applies to the provision of the Renter's personal data to Mrs. B. G. in terms of her name and surname. Bearing in mind that a person who has a specific legal title to the premises (in this case it is a lease agreement), it is indisputable that Mrs B. G. and the Lessee are parties to the lease agreement of the above-mentioned the flat, as well as the legally justified (on the basis of the discussed provisions on housing allowances) interest in the area of obtaining information on the amount of expenditure incurred on this premises - the legality of disclosing the data in question in the context of art. 6 sec. 1 lit. f) GDPR

does not raise any doubts. Regarding the issue of the Cooperative's disclosure to the Lessee of information on the names and surnames of other (apart from Mrs. BG) persons who jointly have the cooperative ownership right to the premises, it should be noted that in the light of the provisions of the Act of December 15, 2000 Cooperative Law ( Journal of Laws of 2018, item 845, as amended), regulating the issues of the cooperative ownership right to a dwelling as a limited property right within the meaning of Art. 244 of the Act of 23 April 1964 Civil Code (Journal of Laws 2018, item 1025 as amended), including in particular regulations indicating the possibility of free disposal of this right (Article 17 (3) of the Cooperative Law), taking into account the provisions on joint ownership (Article 195 et seq. of the Civil Code) and on the lease of residential premises (Articles 659 - 692 of the Civil Code), it is reasonable to assume that a tenant of a premises for which several persons jointly have a cooperative ownership right to a dwelling, it obtains this right from all of them together. In this situation, the authority competent for the protection of personal data does not find reasons to assume that the Cooperative had grounds to believe that the Tenant of the premises belonging jointly to the Complainants did not know their names and surnames. As a supplement, it should be noted that the content of the questioned document issued by the Cooperative for the benefit of the Lessee, the so-called the tenant code does not in fact carry any specific information about the Complainants.

To sum up, the authority competent for the protection of personal data assessed the questioned activity of the Cooperative as authorized under Art. 6 sec. 1 lit. f) GDPR

Considering the above, the President of the Personal Data Protection Office resolved as in the sentence.

Pursuant to Art. 7 sec. 2 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), the proceedings before the President of the Office for Personal Data Protection are single-instance. This decision is final. Based on Article. 52 § 1 and 2 and article. 53 § 1 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2018, item 1302, as amended), the party is entitled, within 30 days from the date of delivery of this decision, to lodging a complaint against it with the Provincial Administrative Court in Warsaw. The complaint is lodged through the President of the Personal Data Protection Office (to the following address: 00 - 193 Warsaw, ul. Stawki 2). The fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs.

2019-04-17