

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 03

April

2019

DECISION

ZSOŚS.440.125.2018

Based on Article. 105 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 12 point 2, art. 22 and 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, as amended) in connection with Art. 100 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) following administrative proceedings regarding the complaint of Mrs. A. G., residing in in L., to be made available by X. sp.z o.o. based in W. her personal data for the District Prosecutor's Office [...] in L. and the Commander [...] of the Police Station in L.,

I discontinue the proceedings

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms A. G. (hereinafter referred to as "the Complainant") that X. sp. Z o.o. with its seat in W., (hereinafter referred to as "X.") the complainant's personal data for the District Prosecutor's Office [...] in L. (hereinafter referred to as the "Prosecutor's Office") and the Commander [...] of the Police Station in L., in in connection with the proceedings with reference number [...].

Justifying her request, the applicant argued that the Prosecutor of the District Prosecutor's Office [...] in L., by decision no. [...] of [...] March 2015, demanded the release of a computer that could constitute evidence in the case and ordered the officers [...] of the Police Station in L. to perform these activities, as a result of obtaining information about the computer's IP address from the operator the X.

In the justification of the decision, the reasons for ordering these activities were presented, namely the fact that the prosecutor's office supervised the investigation of, inter alia, willfully distribute without authorization via the Internet in 2012 in

L., using a torrent program called uTorrent2.2, of Joanne K. Rowling's work "Harry Potter and the Philosopher's Stone" (audiobook), to which the proprietary copyrights are owned by M. sp z o. o in P., i.e. for an act under Art. 116 sec. 1 of the Act on Copyright and Related Rights. It was also stated that the collected evidence shows that the IP number of the computer from which the illegal dissemination of the work took place was assigned to Ms A. G.

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, 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 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. In addition, on February 6, 2019, the Act 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. Pursuant to Art. 100 of this Act, proceedings initiated and not completed before the date of entry into force of the Act are conducted on the basis of the existing provisions.

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

The personal data of Ms A. G. was obtained by Y. Sp. z o.o. (X. sp. Z o.o. is the legal successor of Y. Sp. Z o.o.) in connection with the conclusion of the contract for the provision of Internet network delivery services of [...] September 2011. Following the decision of the prosecutor Y. Sp. z o.o. provided the complainant's personal data in connection with the content of art. 159 paragraph 4 of the Act of July 16, 2004. Telecommunications law (Journal of Laws of 2016, item 1489, as amended).

In the course of the proceedings, the public prosecutor exempted Y., based in L., from keeping professional secrecy, pursuant to Art. 180 § 1 of the Act of June 6, 1997, Code of Criminal Procedure (Journal of Laws of 2018, item 1987), hereinafter referred to as the "CCP", in the scope of personal data, including address data of subscribers of IP addresses, and obtained on on this basis, personal data was aimed at identifying persons who could have committed prohibited acts and then performing procedural actions with their participation aimed at determining whether a prohibited act had been committed.

Then, by a decision of [...] March 2015, the prosecutor of the District Prosecutor's Office [...] in L., pursuant to Art. 180, art.

217, art. 219 and art. 220 of the Code of Criminal Procedure requested that the items in the form of a computer be delivered from Ms A. G., and in the event of refusal, ordered the search of the residential premises occupied by the applicant. This operation was carried out by the officers of the Police [...] Station in L. on [...] April 2015, while the "S." laptop was secured in the course of it. together with the power cord.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

The Personal Data Protection Act of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Act", defines the rules of conduct in the processing of personal data and the rights of natural persons whose data personal data are or may be processed in data files (Article 2 (1) of the Act). The processing of personal data is lawful only if their administrator has one of the material conditions for the admissibility of processing, listed in art. 23 sec. 1 of the Act (processing, in accordance with Article 7 (2) of the Act, is understood as any operations performed on these data, including their sharing). Each of the ones indicated in Art. 7 pts 2 of the Act, the forms of personal data processing should be based on one of the prerequisites for the legality of the processing of personal data, enumerated in Art. 23 sec. 1 point 1-5 of the act in the case of the so-called ordinary data or art. 27 sec. 2 points 1-10 for sensitive data.

Due to the wording of Art. 7 of the Constitution of the Republic of Poland of April 2, 1997, according to which organs of public authority operate on the basis and within the limits of the law, the content of Art. 23 sec. 1 point 2 of the Act, which states that data processing is permissible when it is necessary to exercise the right or fulfill an obligation resulting from a legal provision. Undoubtedly, the data of participants in criminal proceedings are processed for the purpose necessary to fulfill the legal obligation incumbent on law enforcement authorities, which is the performance of tasks in the field of prosecuting crimes and upholding the rule of law. According to the principle of legalism, public authorities operate on the basis and within the limits of the law. In this case, in particular, the provisions of the Act of 6 June 1997, Code of Criminal Procedure (Journal of Laws of 2018, item 1987), hereinafter referred to as "CCP", should be indicated.

Pursuant to Art. 10 of the Code of Criminal Procedure, the authority established to prosecute crimes is obliged to initiate and conduct preparatory proceedings, and the public prosecutor also to bring and support accusations - for an act prosecuted ex officio. Art. 218 of the Code of Criminal Procedure, according to which offices, institutions and entities operating in the field of postal or telecommunications activities, customs and tax offices as well as transport institutions and enterprises are obliged to issue to the court or the prosecutor, upon the request contained in the decision, correspondence and parcels and data about

which referred to in Art. 180c and art. 180d of the Act of July 16, 2004, Telecommunications Law (Journal of Laws of 2017, item 1907, as amended), if they are relevant to the pending proceedings. Only the court or the prosecutor has the right to open them or order their opening.

In turn, in accordance with the content of Art. 180d of the Telecommunications Law, telecommunications undertakings are obliged to ensure the conditions of access and recording and to make available to authorized entities, as well as to the court and the public prosecutor, at their own expense, the data processed by them referred to in art. 159 sec. 1 points 1 and 3-5, in art. 161 and in art. 179 paragraph. 9, related to the provided telecommunications service, on the terms and in compliance with the procedures specified in separate provisions.

The content of Art. 15 § 1 of the Code of Criminal Procedure, which clearly states that the Police and other authorities in the field of criminal proceedings execute the orders of the court, court clerk and public prosecutor, and conduct, under the supervision of the public prosecutor, an investigation within the limits specified in the Act.

It should be noted, however, that the President of the Personal Data Protection Office, as part of the powers conferred on him by the Act, may not interfere in the course or in the manner of proceedings conducted by other authorities authorized under separate provisions. Thus, it cannot interfere with specific decisions taken by competent authorities in order to establish the facts of a given case. The above is confirmed by the jurisprudence of the Supreme Administrative Court, which in its judgment of March 2, 2001 (file number II SA 401/00) stated that the Inspector General for Personal Data Protection (currently: President of the Office for Personal Data Protection) is not a controlling body nor overseeing the correct application of substantive and procedural law in matters falling within the competence of other authorities, services or courts, whose decisions are subject to review in the course of the instance or in any other manner determined by appropriate procedures.

Bearing in mind the above, it should be emphasized that the authority for the protection of personal data is not competent to control the procedural steps taken by another authority in the proceedings with the use of personal data, be it a court, a prosecutor, or the police commissioned by the Public Prosecutor's Office, as was the case. in the present case (see the judgment of the Provincial Administrative Court in Warsaw of February 27, 2012, file no. II SA / Wa 2848/11).

Due to the lack of competence of the President of the Office to substantively resolve this case, the proceedings initiated by the complaint lodged by the complainant had to be discontinued as redundant, pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure. The doctrine indicates that: "the objectivity of administrative proceedings", as

provided for in Art. 105 § 1 of the Code of Civil Procedure, means the lack of any of the elements of the material-legal relationship, resulting in the fact that it is impossible to settle the matter by deciding on its merits. The discontinuation of administrative proceedings is a formal ruling that ends the proceedings, without a substantive decision (judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, II OSK 1393/09). The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the case. .

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

Based on Article. 9 sec. 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), from this decision, the party 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 (address: ul. Stawki 2, 00-193 Warsaw). The party has the right to apply for the right to assistance, including exemption from court costs.

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