

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

January

2019

DECISION

ZSZZS.440.370.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), 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 sec. 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000) and art. 6 sec. 1 lit. c 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 (Official Journal of the European Union , L 119, May 4, 2016), after conducting administrative proceedings regarding the complaint of Mr. MB, for disclosure of his personal data in the field of name, surname and place of residence by the Customs and Tax Office in W. on the Office's website at the following addresses:

[...]

[...]

[...]

President of the Personal Data Protection Office

orders the Customs and Tax Office in W. to delete the personal data of Mr. M.B. as regards the name, surname and place of residence on the website of the Office at the following addresses:

[...]

[...]

[...].

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Mr.

[...]

[...]

[...]

In the content of the complaint, the Complainant indicated that his data had been made available in connection with the recruitment conducted by the Office. He also argued that disclosing his data in such a context limits his right to privacy and allows for profiling of his person.

In the course of the administrative proceedings, the President of the Personal Data Protection Office established the following facts.

The complainant participated in the recruitment for the position [...] at the Tax Control Office in W. [...] ended on [...] March 2016, in which another candidate was selected. Nevertheless, the Complainant's name and surname were not removed from the Office's website, also after the complainant was requested to stop processing his data.

The director of the Tax Administration Chamber in W. in the submitted explanations pointed to the existence of a legal provision which obliges to publish personal data regarding the names and surnames of candidates who met the formal requirements of the announced recruitment due to the public nature of this information, which was also the basis for refusing to meet requests to stop processing the Complainant's personal data on the Office's website.

The Complainant's personal data can still be found on the Office's website at the following addresses:

[...]

[...]

[...]

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

At the outset, it should be noted that as of the date of entry into force of the Act of May 10, 2018 (Journal of Laws of 2018, item 1000), i.e. May 25, 2018, in accordance with Art. 167 paragraph. 1 above of the Act, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. However, according to Art. 160 above of the 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 (Journal

of Laws of 2016, item 922 with amended), hereinafter referred to as the Act of 1997, in accordance with the principles set out in the Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), hereinafter referred to as Kpa.

In addition, it is necessary to emphasize that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to settle the case based on the actual state of affairs at the time of issuing this decision. As argued in the doctrine, "a public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that a public administration authority issues an administrative decision based on the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure, M. Jaśkowska, A. Wróbel, Lex., EI / 2012). Moreover, in the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07, the Supreme Administrative Court stated that "when examining [...] the legality of personal data processing, GIODO is obliged to determine whether, as at the date of issuing the decision in the case, the data of a specific entity are processed and whether it is done in a lawful manner ".

It should be emphasized that the decisive factor for the decision that must be issued in the case in question is the fact that the complainant's personal data are still processed on the Office's website, therefore the provisions in force at the time the decision was issued, i.e. the Regulation of the European Parliament and of the Council (EU) 2016/679 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 (Official Journal of the European Union, L 119, May 4, 2016), hereinafter referred to as: GDPR.

In the case at hand, the scope of the complainant's personal data that was made available falls within the so-called "Ordinary data", so Art. 23 sec. 1 of the Act of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the Act of 1997. According to the explanations provided by the Office, it should be indicated that pursuant to Art. 2 clause 1 point 3a of the Act of 21 November 2008 on the civil service (Journal of Laws 2018.1559), employees of the National Tax Information and tax administration chambers constitute the civil service corps. Additionally, pursuant to Art. 29 of the Civil

Service Act, the recruitment results for the above-mentioned bodies and the names and surnames of candidates who meet the formal requirements, constitute public information in the scope covered by the requirements specified in the recruitment announcement. Moreover, pursuant to Art. 7 sec. 1 point 1 of the Act of 6 September 2001 on access to public information (Journal of Laws of 2018, item 1330), public information must be published in the Public Information Bulletin.

In view of the above, it should be considered that the Complainant's personal data was made available on the Office's website in accordance with the provisions of law in force at the time, i.e. Art. 23 sec. 1 point 2 of the Act of 1997 in connection with Art. 2 clause 1 point 3a and art. 29 of the Civil Service Act.

With regard to the continuation of the processing of these data, the analysis requires Art. 6 sec. 1 GDPR, which regulates the admissibility of processing the so-called "Ordinary data" taking place after May 25, 2018. The catalog of 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. 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). In addition, the processing of personal data must comply with the principles set out in Art. 5 sec. 1 GDPR. These principles include, inter alia, limitation of the purpose of processing (point b) as well as data storage restrictions (point e). The aforementioned principles require that the processing process be directed towards a specific, explicit and legitimate purpose, and that the data enabling the person to be identified are kept in this form only for the period necessary to fulfill the specific purpose.

As indicated above, the Civil Service Act makes information about recruitment and the above-mentioned of the candidates concerned, public information which, in accordance with Art. 7 sec. 1 point 1 of the Act on access to public information must be published in the Public Information Bulletin. In view of the above, the President of the Personal Data Protection Office does not negate the correctness and purposefulness of disclosing the Complainant's personal data by the Office in connection with the fulfillment of the obligation arising directly from the provisions of the Civil Service Act. Nevertheless, it should be noted that the above-mentioned regulations, which oblige the publication of data concerning the recruitment, do not specify the period in which the data of the person participating in the recruitment may be made available in the manner described by the Complainant. Therefore, the provisions of the GDPR apply to determine this period. As indicated above, all forms of personal

data processing must comply with the principles set out in art. 5 sec. 1 GDPR. Therefore, personal data should be processed for a clearly defined purpose, to the extent that is adequate for that purpose, and only for the period of time necessary to fulfill the purpose. In this respect, the President of the Office shares the opinion that even if certain data correspond to the purpose for which they are collected and are adequate for that purpose, it does not follow that they may be processed, including made available to other entities. The temporary determinant here is the achievement of the intended purpose of processing (also: J. Barta, P. Fajgielski, R. Markiewicz, Personal data protection, Comment, Kraków 2007, 4th edition, p. 510). In connection with the above, the data controller is obliged to consider the purposefulness and establish a period of sharing personal data and their immediate deletion after the expiry of the established period.

In the case at hand, the purpose of disclosing the data of candidates who have met the formal requirements of the recruitment is the implementation of the principle of openness, which allows for a social control of the correctness of the recruitment procedure. Therefore, the time of publication of such data should be sufficient to enable such control to be carried out at a time not too distant from the selection made, i.e. at a time when candidates or third parties may be interested in a given recruitment and will want to exercise the right to such information as they are entitled to. art. 31 of the Civil Service Act. It seems that the optimal period of time during which such information may be disclosed pursuant to Art. 31 of the Act is a period of three months from the date of their publication. For such a period of time may indicate Art. 33 of the Civil Service Act, which constitutes an exception to the principle of the obligation to conduct recruitment. At the same time, it must be remembered that the provision of Art. 29 of the Civil Service Act considers the results of the recruitment as public information, and therefore any person interested in the result of the recruitment may submit an application for disclosure of such information in a situation when it is removed from the Office's Bulletin, the Office's Bulletin or is no longer available at the seat of the office to which the there was recruitment.

The administrative procedure conducted by the President of the Personal Data Protection Office serves to control the compliance of data processing with the provisions on the protection of personal data and is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the act. As follows from the wording of the above-mentioned provision, in the event of a breach of the provisions of the Act on the Protection of Personal Data, this authority ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the lawful state, and in particular the removal of the deficiencies (point 1), , updating, rectification, disclosure or non-disclosure of personal data (point 2), application of additional

security measures for the collected personal data (point 3), suspension of the transfer of personal data to a third country (point 4), data protection or transfer to other entities (point 5) , deletion of personal data (point 6).

In view of the above, the continuation of the processing of the complainant's personal data on the website [...] of the Customs and Tax Office in W. should be considered redundant and inconsistent with the applicable provisions on the protection of personal data. Therefore, the President of the Personal Data Protection Office ordered the removal of the Complainant's personal data in the scope of the first name, last name and place of residence from the websites indicated in the complaint.

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

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he 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. 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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