

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 29

July

2019

DECISION

ZSOŚS.440.55.2019

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 5 sec. 1 point 6 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 a complaint by Mr. JG (residing in [...], for the disclosure of his personal data by the Municipal Police Commander in O. (ul. [...]) to the Marshal of the Province [...] (ul. [...]))

I refuse to accept the application

Justification

The Personal Data Protection Office (hereinafter "UODO") received a complaint by Mr. J. G. on [...] February 2019, residing in in D. (hereinafter the "Complainant"), regarding the disclosure of his personal data by the Municipal Police Commander in O. (hereinafter the "Commander") to the Marshal of the Voivodship [...]

In response to the complaint. The President of the Personal Data Protection Office (hereinafter "the President of the Personal Data Protection Office") called on the Complainant in a letter of [...] March 2019 to remove its formal shortcomings by specifying the complaint request.

The complainant, in a letter of [...] March 2019, sent to the President of the Personal Data Protection Office (UODO) as a remedy for formal defects in the complaint, indicated that he was demanding the initiation of proceedings regarding the infringement of the provisions on the protection of personal data by the Commander. The complainant accused the Commander of "breaching the principles of personal data protection by subordinate police officers (employees) by unauthorized disclosure of information to unauthorized persons on the traffic offense of [...] June 2018. The complainant also submitted that the provisions of the Act of 5 January 2011 about drivers of vehicles (Journal of Laws of 2019, item 341, as amended) "do not regulate the issue of providing information by the Police about road offenses committed by examiners of

candidates for drivers, both to the Marshal of the Province keeping the records of examiners, and to the director of the Provincial Traffic Center Roadside employing examiners. ".

In the course of the proceedings initiated as a result of the complaint. The President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

By letter of [...] April 2019, as a result of the initiation of the complaint procedure. The President of the Personal Data Protection Office (UODO) asked the Commander to submit written explanations on the matter, and in particular to indicate whether, and if so, on what legal basis, for what purpose and to what extent the Commander processes the complainant's personal data, and whether and if so on what legal basis, for what purpose and scope, the Commandant disclosed the complainant's personal data to the Marshal of the Voivodship [...]

In response to the letter of the President of the Personal Data Protection Office, the Commandant replied in a letter of [...] May 2019 (ref.: [...]), in which he explained that the complainant's personal data are collected and processed pursuant to Art. 130 of the Road Traffic Act of June 20, 1997 and the executive act to the act, i.e. the Ordinance of the Minister of the Interior of April 25, 2012 on dealing with drivers violating road traffic regulations, to the extent indicated in the above-mentioned regulation " Moreover, the Commandant indicated that "pursuant to Article 67 (2) (1) and (2) of the Act of 5 January 2011 on vehicle drivers, the Marshal of the Voivodship [...] on [...] request for information on violations of road traffic regulations by Mr. JG In response to the request, the Municipal Police Headquarters in O., after obtaining information from the records kept by the Provincial Police Headquarters in O., pursuant to § 10 of the Regulation of the Minister of the Interior of 25 April 2012 in the matter of dealing with drivers violating road traffic regulations The Police provided information on entries in the register of drivers violating road traffic regulations regarding the Complainant J . G. "

To the above-mentioned the Commander's letters of [...] May 2019, copies certified to be true to the original are attached:

1) letters from the Marshal of the Voivodship [...] of [...] July 2018; 2) letters from the Commander to the Road Traffic Department of the Provincial Police Headquarters in O. of [...] August 2018; 3) letters from the Head of the Road Traffic Department of the Provincial Police Headquarters in O. to the Commander of [...] August 2018; 4) information about the entry concerning the complainant in the register of drivers violating road traffic regulations; 5) letters from the Commander to the Voivodship Marshal [...] of [...] August 2018

It should be noted that the documents attached above show that [...] June 2018, the complainant committed a road traffic

offense, as a result of which his personal data was entered in the register of drivers violating road traffic regulations.

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

The above-mentioned 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), hereinafter referred to as the "PDA", creates legal grounds for applying state protection in situations illegal processing of citizens' personal data by public law entities, in order to identify, prevent, detect and combat prohibited acts, including threats to public safety and order, as well as the execution of pre-trial detention, penalties, order penalties and coercive measures resulting in deprivation of liberty.

In order to implement the above-mentioned protection, the supervisory body, i.e. the President of the Personal Data Protection Office, has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the President of the Personal Data Protection Office, assessing the status of the case and performing subsumption, determines whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in art. 13 of the PDPA and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the application, or discontinues the proceedings. The issuing of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing.

Pursuant to Art. 13 of the PDPA, the competent authorities process personal data only to the extent necessary to exercise the right or fulfill the obligation resulting from the law. Therefore, in view of the above, when applying the provisions of the Personal Data Protection Act, it is necessary to weigh the underlying goods each time. The President of the Personal Data Protection Office (UODO) found the legal grounds for the processing and disclosure of the Complainant's personal data to the [...] Marshal of the Voivodship to be correct and correct, cited by the Commander in his letter of [...] May 2019. It should be noted that at the time when the facts cited in the complaint occurred, the legal basis for the processing and disclosure of the complainant's personal data by the Commander-in-Chief was Art. 130 of the Act of June 20, 1997, Road Traffic Law (Journal of Laws of 2018, item 1990, as amended), art. 67 sec. 2 points 1 and 2 of the Act of January 5, 2011 on vehicle drivers (Journal of Laws of 2019, item 341, as amended) and § 10 of the Regulation of the Minister of the Interior of April 25, 2012 on proceedings with drivers violating road traffic regulations (Journal of Laws of 2012, item 488).

Pursuant to the wording of Art. 130 sec. 1 of the Act of June 20, 1997, Road Traffic Law (Journal of Laws of 2018, item 1990,

as amended), in force at the time the Police performs the activities referred to in the complaint, "The Police keeps records of drivers violating road traffic regulations . A specific violation is assigned an appropriate number of points on a scale from 0 to 10 and entered in this register. "In turn, pursuant to Article 67 (1) and (2) (1) and (2) of the Act of 5 January 2011 on drivers vehicles (Journal of Laws of 2019, item 341 zc.), the voivodship marshal supervises the conduct of state examinations for checking the qualifications of people applying for the right to drive vehicles, and in the exercise of this supervision, the following persons cooperate with:

1) Police - with regard to the control of the practical part of the exam and 2) the administrator of data and information collected in the records in the field of providing information on violations of road traffic regulations committed by drivers who passed the exam in a given provincial road traffic center.

Moreover, pursuant to § 10 sec. 1 point 3 of the Regulation of the Minister of the Interior of 25 April 2012 on dealing with drivers violating road traffic regulations (Journal of Laws of 2012, item 488), information on entries in the records is provided by the Police to voivodship marshals - in relation to persons applying or holding the qualifications of an examiner. It should be noted that Art. 130 of the Road Traffic Act of June 20, 1997 (Journal of Laws of 2018, item 1990, as amended), despite its formal repeal by the Act of May 9, 2018 amending the Road Traffic Act and some other acts (Journal of Laws of 2018, item 957), pursuant to Art. 16 sec. 1 of this Act, "in its current wording, shall apply until the date of implementation of technical solutions enabling the introduction, transfer, collection and sharing of data on infringements referred to in Art. 130 of the Act amended in Art. 7 ". Thus, it should be stated that during the processing and disclosure by the Commander of the Complainant's personal data to the Marshal of the Voivodship [...], Art. 130 of the Road Traffic Act of June 20, 1997 (Journal of Laws of 2018, item 1990, as amended), along with the provisions of the Regulation of the Minister of the Interior of April 25, 2012 on the procedure issued on its basis with drivers violating road traffic regulations (Journal of Laws 2012, item 488), was still in force.

Considering the wording of the above-mentioned provisions and referring to the Complainant's allegation that the Commander did not have a legal basis to process and disclose [...] the complainant's personal data to the [...] Marshal of the Voivodship, it should be stated that this allegation is unfounded. The wording of the cited provisions shows that the Commandant was entitled, as part of the tasks and obligations imposed on the Police, to process the complainant's personal data by entering them into the register of drivers violating road traffic regulations and making them available to the Marshal of the Province [...].

It should be noted that the other circumstances mentioned in the complaint and concerning the technical issues of speed measurement by the Police during a roadside inspection, evidence proceedings related to committing a traffic offense and administrative proceedings to remove the Complainant from the register of examiners, do not fall within the scope of the proceedings conducted by the President of UODO in on breach of the provisions on the protection of personal data. In the proceedings in question, the President of the Personal Data Protection Office may not treat as evidence the Complainant's suggestions regarding the social connections of certain persons and conjectures regarding their intentions.

Bearing in mind the above and acknowledging the correctness of the explanations provided by the Commander, it should be stated that this authority has a legal basis for processing and disclosing the Complainant's personal data in the manner described above.

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

The decision is final. Pursuant to Art. 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), the parties have 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 Office (address: ul. Stawki 2, 00-193 Warsaw). 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.

2019-08-06