

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

## DECISION

ZKE.440.70.2019

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), art. 160 sec. 1 and 2 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) in connection with joke. 12 point 2 and art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 6 sec. 1 lit. f) and art. 57 sec. 1 lit. a) and lit. f) 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 (general regulation on protection of personal data) (Journal of Laws UE L 119 of May 4, 2016, page 1 and Journal of Laws UE L 127 of May 23, 2018, page 2), after conducting administrative proceedings regarding the complaint of Mrs. AT, on irregularities in the processing of her personal data by I. Spółka Jawna, President of the Office for Personal Data Protection refuses to accept the request.

## JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms A. T., hereinafter referred to as "the Complainant", about the processing of her personal data by I. Spółka Jawna, hereinafter referred to as the "Company". The complainant submitted that the Company processes on its websites (e.g. [...], [...], [...]), without her consent, her personal data related to her past participation in the company "P. Partnership A. T. - M. Ł. ". In connection with the presented situation, the Complainant requested to take actions resulting in the cessation of the processing of her personal data by the Company, in particular to remove her data from the Company's websites.

In the course of the proceedings conducted in this case, the President of the Personal Data Protection Office established the following facts:

In the period from [...] May 2010 to [...] January 2017, the applicant participated as a partner in the company "P. Partnership A.

T. - M. Ł. " (KRS No. [...]), hereinafter referred to as "the company M.". The partners ran a dental practice within it. On [...] January 2017, this entity was removed from the Register of Entrepreneurs of the National Court Register (hereinafter also referred to as "KRS") by the District Court K., [...] Commercial Division of the National Court Register. The deletion became final on [...] February 2017.

The company is the owner and subscriber of the [...] and [...] internet domains. He is also the administrator of personal data processed there.

As it results from the Regulations for the use of Website I., located at [...], the Company provides services through it, consisting in the provision of information from Economic Information Bureaus, the National Court Register and the Court and Economic Monitor, including information on business entities , information on persons performing specific functions in these entities, reports on business entities and reports on persons performing specific functions in these entities.

The website with the address [...] is used to check, on the basis of certain criteria (name and / or surname), whether a given person is listed in the IT system of Service I. Obtaining detailed data about a given person takes place after redirecting to the website of the Service I. with the address [...] .

The website with the address [...] is used to check, on the basis of certain criteria (e.g. part of the name), whether a given company (entity registered in the National Court Register) is in the IT system of Serwis I. Obtaining detailed data about a given company (entity registered in the National Court Register) takes place after redirecting to the website of the Website I. with the address [...].

On publicly available websites [...], [...] and [...] and in reports offered by the Company about the Complainant and about M., the Company processes the Complainant's personal data obtained from Monitor Sądowy i Gospodarczy and the Register of Entrepreneurs of the National Court Register and only in the scope of data disclosed there. These are information related to the applicant's participation in the company M. (her first and last names, age, sex, PESEL number, information that she is a partner authorized to represent company M alone), as well as data about the company M. its identification number in the National Court Register, company, address of the registered office, subject of activity, data of the other partner in the company, the date of its entry and deletion from the National Court Register and the entry into force of the entry on deletion from the National Court Register, date of suspension of its activity, dates of any changes concerning it, disclosed in the National Court Register) . The company does not process data about the complainant's address and other addresses.

As explained by the Company, the complainant's personal data was obtained pursuant to art. 8 of the Act of August 20, 1997 on the National Court Register (Journal of Laws of 2019, item 1500, as amended), hereinafter referred to as the "Act on the National Court Register".

As follows from the Privacy Policy of Website I., the Company is currently processing the complainant's personal data "in order to perform the current activity of I. consisting in providing our clients with information about entrepreneurs, including legal entities and natural persons related to them (such as members of commercial companies' bodies, proxies, partners of companies, etc.) "and" on the basis of our legitimate interest, which is the ability to collect and make available to other participants of business transactions correct, reliable and valuable information on entrepreneurs from publicly available sources [...] ". As indicated in the Privacy Policy, "the information provided by I. is used to ensure the security, transparency and certainty of business transactions for I. Customers."

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

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o. 2018 ", ie on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. 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 (Journal of Laws of 2016, . item 922, as amended), hereinafter referred to as "uodo 1997 ", in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096 as amended), hereinafter referred to as" the Code of Administrative Procedure ". All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1-3) of the Act on Personal Data Protection Act 2018).

Pursuant to Art. 57 sec. 1 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 (general regulation on the protection of personal data) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), hereinafter referred to as "Regulation 2016/679", without prejudice to other tasks determined pursuant to this regulation, each supervisory authority on its territory monitors and enforces the

application of this regulation (point a) and deals with complaints brought by the data subject or by a data subject empowered by him, in accordance with Art. 80 by Regulation 2016/679 - the entity, organization or association, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and results of these proceedings within a reasonable time (point f). The instruments for the implementation of the tasks provided for in Art. 57 sec. 1 of Regulation 2016/679 are in particular specified in its art. 58 sec. 2 remedial powers, including the possibility of: ordering the controller or processor to comply with the data subject's request resulting from their rights under this Regulation (Article 58 (2) (c)), ordering the controller or processor to adjust the processing operation to the provisions of this Regulation and, where applicable, an indication of the method and date (Article 58 (2) (d)).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the actual state of affairs at the time of issuing this decision. As the doctrine points out, "the 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). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 stated that: "when examining the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed as at the date of issuing the decision on the matter and whether it is done in a legal manner".

Pursuant to the wording of Art. 23 sec. 1 u.o.d.o. 1997, in force in the period in which the Company obtained the complainant's personal data and in which the complainant lodged a complaint with the GIODO in this case, the processing of personal data was permissible when: the data subject consents to it, unless it concerns deletion of its data (point 1), it is necessary to exercise the right or fulfill an obligation resulting from a legal provision (point 2), it is necessary to perform the contract when the data subject is its party or when it is necessary to take action before concluding the contract at the request of the data subject (point 3), it is necessary to perform the tasks specified by law for the public good (point 4), it is necessary to fulfill

legally justified purposes pursued by data administrators or data recipients, and the processing is not violates the rights and freedoms of the data subject (point 5).

Pursuant to the currently applicable regulation (Article 6 (1) of Regulation 2016/679), data processing (each activity falling within this concept) is lawful only in cases where - and to the extent that - what at least one of the following conditions: a) the data subject has consented to the processing of his 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.

Relating the above-mentioned provisions to the actual state of the case, it should be stated that both in the legal state in force until May 24, 2018 (regulated by the provisions of the Personal Data Protection Act 1997) and in the legal state in force (from May 25, 2018, i.e. from the date of the application of the provisions of Regulation 2016/679), one of the several independent grounds for the processing of personal data is the necessity of this processing for the implementation of legally justified goals (interests) of the administrator. The Company relied on and continues to do so in the present case. In its explanations, the company also indicated the National Court Register as the source from which it obtained the complainant's personal data and referred to Art. 8 of the Act on the National Court Register as the basis for obtaining them from the National Court Register. The Act on the National Court Register introduces in its Art. 8 principle of formal openness of the National Court Register. The aforementioned provision expressly states that the National Court Register is open (section 1), that everyone has the right to access the data contained in the National Court Register via the Central Information (section 2) and that everyone has the right to receive, also by electronic means, certified copies, excerpts , certificates and information from the National Court Register (section 3). Art. 12 sec. 1 of the Act on the National Court Register introduces a general rule that the data contained in the National Court Register may not be removed from it (unless the law provides otherwise). However, according to Art. 13 sec. 1 of this act, entries in the National Court Register are subject to publication in the Court and Economic Monitor, unless the act

provides otherwise. At the same time, a number of provisions of the Act on the National Court Register indicate the scope of data subject to entry in the National Court Register, thus establishing the obligation to enter and disclose them in this register. In particular, the following data are subject to entry in the National Court Register: company name, legal form, seat and address of the entity (Article 38 (1) (ac)), information about the partner remaining married (Article 38 (2a)), designation (names and surnames and PESEL number) of the partners of the partner company (Article 38 point 5 in connection with Article 35 point 1), indication of the partners authorized to represent the partner company (Article 39 point 1), subject of the entity's activity according to the Polish Classification of Activities (Article 40 point 1), information on the dissolution of the company (Article 44 (1) (3)).

As established in the present case, the Company processes personal data to the extent specified above in the provisions of the Act on the National Court Register. Moreover, due to the fact that the Company has the complainant's PESEL number, it should be stated that it also processes data on the complainant's date of birth (age) and her sex. According to Art. 15 sec. 2 of the Act of 24 September 2010 on population records (Journal of Laws of 2019, item 1397 as amended) PESEL is an eleven-digit numerical symbol that uniquely identifies a natural person, containing the date of birth, serial number, gender and number control. Its first six digits contain the date of birth (in the following order: the last two digits of the year of birth, the month of birth with the encoded age of birth and the date of birth), the next four digits are the consecutive number and gender of the person (the last digit of the sequence number contains the gender: an even digit, including "0" for women, and an odd digit for men), and the last, eleventh digit is a check number enabling electronic control of the correctness of the assigned identification number.

The company conducts activities consisting in collecting and sharing information on business entities (including commercial companies) and natural persons related to them (including partners of these companies and persons representing them). At the same time, the basic information is made available to all internet users on websites [...], [...] and [...] free of charge, while detailed information in the form of reports on business entities or persons - only users of Website I. (entities using the Company's services during the period test and entities that have concluded or for whom a service agreement has been concluded with the Company) - against payment. The activities of the Company are aimed at providing "other participants of business transactions with correct, reliable and valuable information on entrepreneurs from publicly available sources" and the information provided by the Company - as indicated in the Privacy Policy of Website I. - "serve to ensure security, transparency

and certainty. business transactions for Clients I. ". The goals, scope of activities and interests of the Company defined in this way are undoubtedly legally justified. It should be pointed out that the goals of its operations declared by the Company coincide with the existence of an open, publicly available and endowed with the warranty of public faith, register which is the National Court Register. The implementation of the Company's interest is also conditioned by the processing of personal data disclosed in publicly available registers, including the personal data of the Complainant as a person participating (voluntarily) in a company subject to mandatory entry in the National Court Register. At the same time, there are no grounds to assume that the implementation of this legitimate interest of the administrator (the Company) must yield to the overriding interests or fundamental rights and freedoms of the complainant, requiring the interference of the President of the Office for Personal Data Protection in this interest of the Company. As indicated, the data questioned by the Complainant and processed by the Company, its personal data are publicly available. At the same time, the scope of the Complainant's personal data made available on Website I. is adequate (not excessive) in the context of the purpose pursued by the Company; their content is consistent with the content of data processed and disclosed in the National Court Register (and also published in Monitor Sądowy i Gospodarczy).

Referring to the fact raised by the Complainant that her personal data was obtained by the Company in connection with the activity which the Complainant no longer conducts (with its participation in a company that no longer exists), it should be stated that such activity, which took place in the past, remains a fact, and the information on this type of activity of the applicant in the broadly understood economic turnover may still remain in the sphere of public interest. For the same reason, the legislator decided - formulating the content of Art. 12 sec. 1 of the Act on the National Court Register - that this information will not be removed from the National Court Register. The fact that the Complainant's personal data related to its participation in the entity removed from the National Court Register is currently of historical value remains - in view of their public nature, current public availability, factual correctness and information value enhancing the certainty of business transactions - without affecting the legality of their further processing by The company.

Summarizing the above considerations, it should be stated that the processing by the Company (including making available on the website) of the publicly available personal data of the Complainant related to her voluntary participation in an entity subject to entry in the National Court Register did not and does not violate the provisions on the protection of personal data. Currently, it is in the factual and legal state at the time of issuing this decision, it is based on the above-mentioned Art. 6 sec. 1 lit. f of

Regulation 2016/679.

Pursuant to the wording of art. 17 sec. 1 of Regulation 2016/679, the data subject has the right to request the administrator to immediately delete his personal data, and the administrator is obliged to delete personal data without undue delay, if one of the following circumstances occurs: a) personal data are no longer necessary to the purposes for which they were collected or otherwise processed; b) the data subject has withdrawn consent on which the processing is based in accordance with art. 6 sec. 1 lit. a or art. 9 sec. 2 lit. a, and there is no other legal basis for the processing; c) the data subject objects to the processing pursuant to Art. 21 sec. 1 against processing and there are no overriding legitimate grounds for processing or the data subject objects to the processing pursuant to art. 21 sec. 2 against processing; d) the personal data have been processed unlawfully; e) personal data must be removed in order to comply with the legal obligation provided for in the Union law or the law of the Member State to which the controller is subject; f) the personal data has been collected in relation to offering information society services directly to the child.

In the present case, the complainant's personal data are still necessary in the context of the purposes pursued by the Company (therefore, there is no premise under Article 17 (1) (a)), the basis for their processing is the legitimate interest pursued by the administrator and not the complainant's consent (so there is no the prerequisites of Article 17 (1) (b), the challenged process of processing the Complainant's personal data is carried out legally (therefore, there is no condition under Article 17 (1) (d), there is no provision that would oblige the Company to remove the questioned the complainant's personal data (therefore, there is no requirement under Article 17 (1) (e), the Complainant's personal data was not collected in relation to offering information society services to the child (therefore, there is no condition under Article 17 (1) (f)). In the present case, it cannot be assumed that there is a prerequisite for an effective request to erase the data referred to in Art. 17 sec. 1 lit. c of the Regulation 2016/679. The mentioned provision requires that personal data be deleted, e.g. in the event of an objection by the person whom they relate to pursuant to Art. 21 sec. 1 of the Regulation 2016/679. The right to raise an objection referred to in this provision is vested in, inter alia, a person whose data is processed for purposes resulting from the legitimate interests of the administrator, in the event of reasons related to his particular situation. In the event of such an objection, the controller is no longer allowed to process this personal data, unless he demonstrates the existence of valid legally valid grounds for processing, overriding the interests, rights and freedoms of the data subject, or the grounds for establishing, investigating or defending claims. As emphasized in the literature on the subject, "[...] a special situation justifying the cessation of the



processing of the applicant's personal data may entail the risk of disclosing by such processing data related to the sphere of privacy or family life, if the use of these data in a specific situation is not absolutely necessary [ ...] "(Fajgielski Paweł, commentary to Article 21, in: Commentary to Regulation 2016/679 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 (general Data Protection Regulation), in: General Data Protection Regulation. Personal Data Protection Act. Comment. Wolters Kluwer Polska, 2018.). In the present case, there are no grounds for considering that such an objection was effectively raised by the applicant; The complainant neither in the course of the proceedings before the President of the Personal Data Protection Office, nor against the Company, indicated or in any way substantiated the existence of a special situation on her side justifying the request to cease processing of her personal data by the Company. It should be noted here that the processing by the Company, for the purposes of Website I, of the complainant's personal data does not involve, for example, potentially excessive, greater than the public nature of her personal data (resulting from their disclosure in the National Court Register) into the sphere of her privacy. Only such interference could possibly justify the objection referred to in Art. 21 sec. 1 of the Regulation 2016/679, brought due to the special situation of the complainant.

To sum up, the processing of the Complainant's personal data by the Company should be considered legal, and the Complainant's request to stop processing them should be deemed not to be considered. Therefore, there are no grounds for the President of the Personal Data Protection Office to use any of the remedial powers provided for in Art. 58 sec. 2 of the Regulation 2016/679. The condition for issuing the order addressed to the Company, referred to in this provision, is that on the date of the decision, the existence of a breach of the provisions on the protection of personal data is found.

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

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery to the party. The party has the right to waive the right to request a retrial. The waiver of the right to submit an application for reconsideration makes the decision final and binding. 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 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.

