THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

July

2019

DECISION

ZSOŚS.440.7.2019

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. 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 Mr. MM, correspondence address: [. ..], on irregularities in the processing of his personal data by the Police Commander in Chief in Warsaw at ul. Puławska 148/150 and the County Police Commander in B. at ul. [...], consisting in the processing of the complainant's personal data in the National Police Information System (KSIP), in a data set containing information on the results of deoxyribonucleic acid (DNA) analysis and in dactyloscopic data sets,

I refuse to accept the application

Justification

The Office for Personal Data Protection received a complaint from Mr. MM, hereinafter referred to as: "Complainant", about irregularities in the processing of his personal data by the Poviat Police Commander in B. and the processing of his personal data in the National Police Information System (KSIP), in a data set containing information on the results of the analysis of deoxyribonucleic acid (DNA), hereinafter referred to as: "DNA data set" and in dactyloscopic data files, the administrator of which within the meaning of the Act of 14 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal U. 2019, item 125) is the Police Commander in Chief.

In the complaint, the applicant requested that the Commander be ordered to delete his personal data from the National Police Registry, the DNA data file and from the dactyloscopic data files in the scope of information obtained in the course of the criminal proceedings against him. In justifying his request, the complainant argued that, in his opinion, there were no grounds

for which the Police authorities process his personal data in the above-mentioned data files. Bearing in mind the above, the Complainant demanded that the President take action to protect his personal data by removing his personal data from the abovementioned data sets.

At the outset, it should be noted that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data, i.e. May 25, 2018, the Inspector General for Personal Data Protection became the President of the Office for Personal Data Protection. In accordance 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), proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry of this Act in life, are carried out on the basis of the existing provisions, i.e. the provisions of the Act of August 29, 1997 on the protection of personal data (Journal of Laws of 2016, item 922, as amended).

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

By letters of [...] January 2019, the President of the Office for Personal Data Protection informed the Complainant and the Poviat Commander of the Police in B. (hereinafter referred to as: "Poviat Commander") about the initiation of explanatory proceedings in the case and asked the Poviat Commander to respond to the content of the complaint and submission of written explanations. In a letter of [...] February 2019 (ref. No .: [...]) the Poviat Commander explained that the applicant was arrested in connection with the suspicion of possessing a firearm without the required permit and storing such firearms and pyrotechnic materials in the shop "B . "It was also indicated in C. It was also indicated that this fact was disclosed [...] in July 2018 by the employees of the above-mentioned shop, and the place where the weapons were stored was a dish for customers. B. an investigation was instituted with reference number [...], and the applicant was arrested, and while he was undergoing procedural actions, both at the Police Station in C. and at the District Prosecutor's Office in B. The applicant signed reports of performed activities using the personal data of “RC” In connection with the collected evidence, the District Court in B. placed the applicant in pre-trial detention.

The Poviat Commander explained that the Police collects and processes personal data in the National Police Information System pursuant to art. 15 of the Police Act (Journal of Laws of 2017, item 2067, as amended) in order to prevent or detect crimes and identify persons, and biological and dactyloscopic material was collected from the detained M. M. pursuant to Art.

15 sec. 1 of the above-mentioned act. Police officers performing activities aimed at recognizing, preventing and detecting crimes and offenses have the right to take fingerprints or smears from the cheek mucosa from persons.

The commandant indicated Art. 15 sec. 1 point 2 lit. b and c of the cited act, which indicates that the above-mentioned activity is also used to identify people with undetermined identity and those who try to hide their identity, if it is not possible to establish their identity in a different way.

Moreover, the Poviat Commander indicated that pursuant to § 25 sec. 1 of the Regulation of the Minister of Interior and Administration of July 21, 2016 on the processing of information by the Police (Journal of Laws of July 22, 2016), the Police Commander in Chief shall collect in the dactyloscopic data files referred to in Art. 21 h of paragraph 1. 1 of the Act of April 6, 1990 on the Police (Journal of Laws of 2019, item 161, as amended), hereinafter referred to as: "Police Act", fingerprints of persons referred to in art. 10 sec. 1 of the Act on anti-terrorist activities and fingerprints of persons provided together with personal data of these persons and information on the legal basis for downloading, in accordance with the regulations issued on the basis of art. 10 sec. 6 of the Act on anti-terrorist activities. In turn, from § 25 sec. 2 clause 2 of the aforementioned regulation, it follows that the manner and procedure for taking fingerprints referred to in para. 1, set out in the regulations issued on the basis of art. 10 sec. 6 of the Act on anti-terrorist activities. Collected by officers of the Internal Security Agency, the Police or the Border Guard in the manner and in the manner specified in the provisions referred to in para. 1, biological material of the persons referred to in art. 10 sec. 1 of the Act on anti-terrorist activities, and the biological material provided in accordance with these regulations, along with the DNA profile marked with, personal data of these persons and information on the legal basis for the collection of biological material, is collected in the DNA data collection referred to in art. 21a paragraph. 1 of the Police Act, the Police Commander in Chief. The Poviat Commander also mentioned that the District Prosecutor's Office in B. was carrying out verification activities in the case no. the act [...] on illegal collection of biological material from M. M. by his officers. These activities, in accordance with the decision of the Prosecutor's Office of [...] December 2018, were completed with the issuance of a decision refusing to initiate an investigation.

Taking into account the above circumstances, in a letter of [...] February 2019, the President of the Office requested the Police Commander in Chief to comment on the content of the complaint by Mr. M. M. and to provide explanations.

In a letter of [...] May 2019 (ref. [...]), the Director of the Intelligence and Criminal Information Office of the Police Headquarters (hereinafter referred to as the "Director"), acting under the authority of the Police Commander in Chief, explained that by [.. .]

May 2019 The complainant did not request the removal or disclosure of personal data. The director also indicated that the Police process personal data in accordance with Art. 20 of the Police Act. In the justification of the above-mentioned the position indicated the legal grounds for the processing of the complainant's personal data by the Police, in particular art. 20 paragraph 2a, section 2ac, paragraph. 2b, section 2c, sec. 17 of the Police Act, their scope and purpose of processing, paying attention to the particularity of these standards (lex specialis) in relation to general provisions, such as the provisions of the Act on the Protection of Personal Data and Art. 51 sec. 5 of the Constitution of the Republic of Poland, which refers to specific regulations in terms of the rules and procedure for collecting and disclosing information about a person. In addition, the letter in question indicates that the processing and exchange of information, including personal data, may concern personal data referred to in art. 14 sec. 1 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), i.e. sensitive data including personal data revealing racial, ethnic, political views , religious beliefs, beliefs, trade union membership and genetic data, biometric data to uniquely identify a natural person, health data, data on a natural person's sexuality and sexual orientation. The data on the results of deoxyribonucleic acid (DNA) analysis processed by the Police include information only about the non-coding part of DNA (Article 20 (1a) of the Police Act). At the same time, it was indicated that pursuant to Art. 21 h of paragraph 1. 1 of the Police Act, the Police Commander in Chief keeps the following dactyloscopic data files, of which he is the administrator within the meaning of the provisions on the protection of personal data: Central Dactyloscopic Registry, in which fingerprints and chejroscopic cards are collected; a set that automatically processes fingerprint data, in which information is processed, including personal data, on people's fingerprints, unidentified fingerprints from crime scenes and fingerprints that may come from missing persons. In the above-mentioned In the letter, it was also noted that the Police process personal data only to the extent specified and in accordance with the provisions cited.

The President of the Office for Personal Data Protection, in the letters of [...] February 2019, informed the Complainant, the Poviat Police Commander in B. and the Police Commander in Chief about conducting administrative proceedings, as a result of which evidence sufficient to issue an administrative decision was collected and about the possibility of termination as to the collected evidence and materials and the requests made in accordance with art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings. [...] June 2019, the Office for Personal Data Protection received a letter from the Police Commander in Chief (sign: [...]) informing that he would not exercise

the right specified in Art. 10 § 1 of the Code of Civil Procedure

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

The right to the protection of personal data, as one of the elements of the right to the protection of a person's privacy, has its source in the provisions of the Act of April 2, 1997, the Constitution of the Republic of Poland. According to the Basic Law, everyone has the right, inter alia, to to the legal protection of private and family life, honor and good name (Article 47 of the Constitution), and disclosure of information about a person is specified by statute (Article 51 (5) of the Constitution). The instruction of Art. 51 sec. 5 of the Constitution is fulfilled by the Personal Data Protection Act, which defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Personal Data Protection Act of August 29, 1997 r.).

The above-mentioned Act on the Protection of Personal Data of August 29, 1997 provides legal grounds for applying state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, assessing the status of the case and subsuming, 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. 23 sec. 1 above of the Act on the Protection of Personal Data and depending on the arrangements made in the matter - either issuing the order or prohibition, or refuses to accept the request, 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. 1 of the aforementioned Act on the Protection of Personal Data, everyone has the right to the protection of their personal data, and the processing of such data, as referred to in Art. 7 point 2 of this Act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time.

In the field of processing various types of information, including personal data, the function of the Police is special, as it collects information that is subject to a special regime and protection. This is reflected in Art. 20 paragraph 1 and sec. 2a of the Police

Act, on the basis of which the Police, subject to the limitations resulting from art. 19, may obtain information, including classified information, collect, check and process it (section 1). The police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, about the following persons, also without their knowledge and consent: about persons suspected of committing crimes prosecuted under public indictment, by the Act as crimes prosecuted by public indictment, about persons with undetermined identity or trying to conceal their identity, about persons posing a threat, referred to in the Act of 22 November 2013 on proceedings against persons with mental disorders posing a threat to life, health or sexual freedom of other persons, persons wanted, missing persons and persons against whom protection and assistance measures have been applied, provided for in the Act of 28 November 2014 on the protection and assistance for the victim and witness (Journal of Laws of 2015, item 21) (Article 20 (2a) of the Police Act).

Detailed rules for the processing of personal data of persons mentioned in art. 20 paragraph 2a of the Police Act is specified in the regulation of the Minister of the Interior and Administration of August 24, 2018 on the processing of information by the Police (Journal of Laws of 2018, item 1636), hereinafter referred to as the "Regulation". Pursuant to § 10 of the regulation in question, the Police operates the National Police Information System (KS1P), which is a set of data sets in which information is collected, checked, processed and used, including personal data referred to in Art. 20 paragraph 2a points 1-6, sec. 2ae and paragraph 2b of the Police Act. The KSIP may also process information, including personal data, to which the Police is entitled to collect, obtain and process on the basis of separate acts, if this contributes to the coordination of information and more effective organization and implementation of the statutory tasks of the Police in the field of detecting and prosecuting perpetrators of crimes. and preventing and combating crime, as well as protecting human life and health (§ 10 (2) of the Regulation). It should be emphasized that the criterion of the necessity to process personal data in the KSIP must always be related to the statutory tasks of the Police, the implementation of which is to be achieved by the provisions of Art. 20 paragraph 1, sec. 2a and 2b in connection with Art. 20 paragraph 17 of the Police Act. Pursuant to Art. 20 paragraph 17b, the personal data referred to in para. 17, shall be deleted if the Police authority has obtained credible information that the act constituting the basis for entering the information into the file was not committed or there is no data sufficient to justify the suspicion of its commission; the event or circumstance in relation to which the information was entered into the collection does not bear the characteristics of a prohibited act; the data subject has been acquitted by a final court judgment. In addition, Chapter 5 of the Regulation indicates the criteria for verifying the storage of personal data in the system in terms of their further usefulness,

which include, inter alia, the type and nature of the crime committed, the type and nature of the infringed good protected by law, the form of the perpetration, the form of the intention, the time that has elapsed since the data was entered into the filing system, the validity of the conditions of legality and the necessity of further data processing to perform statutory tasks, the occurrence of the circumstances specified in art. 20 paragraph 17b and 18 of the Police Act, and in the case of dactyloscopic data, the occurrence of the circumstances specified in art. 211 paragraph. 2 and art. 2lm of this act.

At this point, attention should also be paid to the tasks entrusted to the Police, including the protection of human life and health, property, against unlawful attacks violating these goods, protection of public safety and order, initiating and organizing preventive actions aimed at preventing committing crimes and petty offenses as well as detecting crimes and petty offenses and prosecuting their perpetrators. In order to perform the above tasks, it is important to be able to collect and process personal data without the knowledge and consent of the data subject. Therefore, one should agree with the Provincial Administrative Court in Warsaw, which in its judgment of 10 January 2014 (file reference number IT SA / Wa 1648/13) stated that the lack of these attributes would deprive the Police of "one of the instruments enabling it to take real care of for public safety and order. This, in turn, would make it difficult, and sometimes even prevent the Polish State from properly fulfilling the obligations described in the Constitution of the Republic of Poland towards its citizens (...). Therefore, it would result in subordinating the higher value, which is the good of all citizens, to the lower value, which is the right of the individual to protect her personal data ".

In the course of the proceedings, the President of the Personal Data Protection Office established that the personal data indicated in the complaint by Mr. M. M. had been collected in connection with preparatory proceedings, in accordance with the provisions of law in force at that time, i.e. Art. 20 of the Act of April 6, 1990 on the Police (Journal of Laws of 2015, item 355, as amended), pursuant to which the Police, subject to the limitations resulting from Art. 19, may obtain information, including covertly, collect, check and process it. Art. 20 sec. 2a also stipulated that the Police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, about the following persons, also without their knowledge and consent: 1) persons suspected of committing crimes prosecuted by public prosecution ; 2) minors committing acts prohibited by law as crimes prosecuted by public prosecution; 3) people with undetermined identity or trying to hide their identity; 4) persons posing a threat referred to in the Act of 22 November 2013 on dealing with persons with mental disorders posing a threat to the life, health or sexual freedom of other persons; 5) wanted persons; 6) missing persons; 7)

persons against whom protection and assistance measures, provided for in the Act of 28 November 2014 on the protection and assistance for the victim and witness, have been applied. Art. 20 sec. 2b stipulated that the information referred to in the preceding paragraphs applies to the persons referred to in para. 2a and may include, inter alia, personal data referred to in art. 27 sec. 1 of the Act of August 29, 1997 on the protection of personal data, but the data on the genetic code includes information only about the non-coding part of DNA, fingerprints, photos, sketches and descriptions of the image, as well as features and special characters, pseudonyms.

In the context of the above, it should be added that appropriate verification of the Complainant's data was carried out by the Police authorities in connection with the complaint submitted by the Complainant to the President of the Office for Personal Data Protection regarding the removal of his personal data from the KSIP, DNA collection and dactyloscopic data files. According to Art. 16 of the Act on the protection of personal data processed in connection with the prevention and combating of crime, the administrator verifies personal data within the time limits specified by specific provisions governing the activities of the competent authority, and if these provisions do not specify the deadline - at least every 10 years from the date of collection, obtaining, downloading or updating data. The verification is carried out in order to determine whether there is any data, the further storage of which is unnecessary. Considering the above, the Commandant explained that the legally required verifications were carried out with regard to the circumstances of collecting DNA data from the Complainant and dactyloscopic data from the Complainant in terms of the prerequisites under Art. 51 sec. 4 of the Polish Constitution and Art. 16 of the Act on the protection of personal data processed in connection with the prevention and combating of crime. Due to the fact that the ten-year period of compulsory verification of the collected personal data has not expired yet, there are no statutory grounds for deleting the Complainant's personal data from the KSIP.

In this case, the content of Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, which states that the processing of data is permissible when it is necessary to exercise the right or fulfill the obligation resulting from the law. The legal basis for the processing of personal data of persons against whom the proceedings were conducted by the Police authorities is art. 20 paragraph 1 of the Police Act, pursuant to which the Police, subject to the limitations resulting from Art. 19, can obtain information, including secretly, collect jc, check and process. The police may download, obtain, collect, process and use, in order to carry out statutory tasks, information, including personal data - about persons suspected of committing crimes prosecuted by public prosecution - also without their knowledge and consent (section 2a).

Considering the above, it should be stated that the complainant's personal data was obtained by the Police authorities in a legal manner and is thus processed by them in the KSIP, the DNA data file and in the dactyloscopic data files. Police authorities assess the usefulness of the collected data, which implies that the complainant's data will be left at www. harvest. On the other hand, if the data about a person contained in the file becomes useless for preventive, evidence or detection purposes, the Police authority may decide to remove them as a result of the assessment referred to in § 29 of the ordinance! and the Minister of the Interior and Administration of August 24, 2018 on the processing of information by the Police. In view of the above, it should be stated that the manner of the Police's conduct in the discussed scope does not raise any doubts, and the complainant's complaint does not deserve to be taken into account.

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

The decision is final. 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), in connection with art. 15 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court within 30 days from the date of this decision. delivery to her side. 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.

2019-07-22