

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

June

2019

## DECISION

ZSOŚS.440.24.2018

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. 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 sec. 1 of the Act of December 14, 2019 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125) after administrative proceedings regarding the complaint of Mr. ZB against the processing of his personal data by the Commander Of the Poviast Police of the Poviast [...] with its seat in K. (Commander of the Police Commissariat in T.)

I discontinue the proceedings

### Justification

The Personal Data Protection Office [...] of August 2018 received a complaint from Mr. ZB (residing at [...] ul. ...) based in K. (Commander of the Police Commissariat in T.), as a result of which the President of the Office for Personal Data Protection initiated proceedings with reference number act ZSOŚS.440.24.2018. In the content of his complaint, the Complainant informed that his personal data had been obtained without a legal basis by an officer of the Police Station in T. from the Central Register of Vehicles and Drivers, which he had made available to an unauthorized person. As the complainant further informed, the officer did not conduct or conducts any case or proceedings related to his person.

In connection with the above, the President of the Office for Personal Data Protection called the Complainant in a letter of [...] August 2018 to supplement the formal deficiencies in the complaint, and, referring to the issue concerning the suspicion of committing the offense of "data theft", informed the Complainant about the content of the Supreme Court's judgment The Administrative Court of November 19, 2001 (file reference number II SA 2702/00), according to which the person investigating (...) cases pursuant to the above-mentioned Act on the Protection of Personal Data is not the subject of the proceedings calculated to issue a decision to notify an appropriate authority on the offense related to the processing of personal data and

may not demand it from the supervisory authority in the administrative and legal forms of this procedure.

In a letter of [...] September 2018, the complainant indicated the Police Station in T. as the entity against which the complaint was lodged. In connection with the above letter of [...] October 2018, the President of the Office for Personal Data Protection informed the Complainant about the initiation of the investigation and asked the Commander of the Police Station in T. to provide explanations in the matter. In a letter of [...] October 2018, the Commander of the Police Station in T. informed that the case was investigated by the District Prosecutor's Office in O. as a unit not officially related to the policemen of the Police Station in T., and that all required information is available in the files of the investigation, [...] which was discontinued [...] in March 2018.

On [...] October 2018, another complaint of the Complainant against the processing of his personal data by the Commander of the Police Station in T., as a result of which the President of the Office for Personal Data Protection initiated proceedings with reference number act Z [...].

In addition, on [...] November 2018, the President of the Office for Personal Data Protection asked the District Prosecutor in O. to provide explanations in order to establish the facts in the case at hand. In response of [...] November 2018, the District Prosecutor in O. informed about the ongoing investigation into the abuse of powers by an officer of the Police Station in T., by unlawfully carrying out vehicle checks, and then making the obtained data available by the person who is their administrator to persons unauthorized, which acted to the detriment of the private interest of the Complainant, i.e. for an act under Art. 231 § 1 of the CC in connection with joke. 51 sec. 1 of the Act of August 29, 1997 on the protection of personal data in connection with joke. 11 § 2 of the CC As indicated by the Prosecutor, the proceedings were discontinued due to the finding that the act did not contain the features of a prohibited act. At the same time, the District Prosecutor in O. informed about the ongoing activities pursuant to Art. 327 § 1 of the Code of Criminal Procedure, in order to decide on the grounds for undertaking the discontinued investigation.

The next complaint of the Complainant against the Commander of the Police Station in T., was received [...] on December 2018, as a result of which the President of the Office for Personal Data Protection initiated proceedings with reference number Act [...].

By letters of [...] January 2019 and [...] January 2019, the President of the Office for Personal Data Protection informed the parties about the collection of evidence sufficient to issue an administrative decision. In response, by a letter of [...] February

2019 and a letter of [...] February 2019, the complainant asked for clarification of the status of the case. In connection with the above letters, the President of the Office for Personal Data Protection asked [...] March 2019 to the District Prosecutor in O. asking for clarification as to the completion of activities under Art. 327 § of the Code of Criminal Procedure, referred to in the above-mentioned letter of [...] November 2018. Then, in a letter of [...] March 2019, the President of the Office for Personal Data Protection informed the Complainant about the need to obtain additional explanations in the case, and also informing him about the letters collected in the files of the ZSOŚS.440.24.2018 case and the answers provided to them. In a reply of [...] March 2019, provided by the District Prosecutor in O., it was stated that the activities carried out pursuant to Art. 327 § 1 of the Code of Criminal Procedure did not give rise to a validly discontinued investigation.

Considering the above and the fact that the content of the Complainant's other complaints indicated that they relate to the same facts and the same parties, and from the date of their receipt it was necessary to consider them in the same legal status, the President of the Office for Personal Data Protection issued a decision from [...] May 2019, ref. no. ZSOŚS.440.24.2018 on considering the complaints in question within one proceeding.

In connection with the above, in a letter of [...] May 2019, the President of the Office for Personal Data Protection again informed about the collection of evidence as part of the combined procedure of ZSOŚS.440.24.2018.

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

At the outset, it should be noted that in accordance with Art. 100 sec. 1 of the Act of December 14, 2019 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 into the life of this act is carried out on the basis of the existing regulations. Thus, in the case at hand, 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 the "Act", which defines the rules of procedure for data processing personal data and the rights of natural persons whose personal data are or may be processed in data files (Article 2 (1) of the Act).

Pursuant to the wording of art. 7 point 2 of the Act, data processing should be understood as any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Each of the ones indicated in Art. 7 point 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 of the Act on the

Protection of Personal 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 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.

Moreover, as indicated in Art. 18 sec. 1 of the Act, in the event of violation of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, and in particular: 1) removal of the deficiencies; 2) supplementing, updating, rectifying, disclosing or not disclosing personal data; 3) application of additional security measures for the collected personal data; 4) suspending the transfer of personal data to a third country; 5) securing data or transferring them to other entities; 6) deletion of personal data.

It should be noted that in the case at hand, there were no grounds for applying the provisions set out in Art. 18 sec. 1 of the Act of Measures. The evidence collected in the case does not justify the complainant's claims about the violation of his right to personal data protection. In particular, it should be pointed out that in the case at hand, also based on the provisions of the Act on the Protection of Personal Data, proceedings were conducted by the District Prosecutor in O., which was discontinued due to the lack of features of a prohibited act.

Regarding the punishment of the Police officer, which was demanded by the complainant, it should be noted that the President of the Office for Personal Data Protection does not have competence in this case. Moreover, the content of the judgment of the Supreme Administrative Court of November 19, 2001 (file no. II SA 2702/00), according to which the person investigating (...) cases under the above-mentioned Act on the Protection of Personal Data, is not the subject of proceedings for the issuance of a decision to notify the relevant authority about the offense related to the processing of personal data, about which the Complainant was informed twice (in letters of [...] August 2018 and [...] March 2019)

Taking into account the evidence gathered in the case, it had to be concluded that there was no unlawful acquisition and disclosure of the complainant's data to unauthorized persons. In this situation, the administrative proceedings are discontinued pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096), hereinafter referred to as the Administrative Procedure Code, due to its redundancy. In accordance with the above-mentioned a provision, when the proceedings for any reason have become redundant in whole or in part, the public administration

authority issues a decision to discontinue the proceedings, respectively, in whole or in part. The wording of the above-mentioned regulation leaves no doubt that in the event that the proceedings are deemed groundless, the authority conducting the proceedings will obligatorily discontinue them. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative Procedure means that there is no element of the material legal relationship, and therefore it is not possible to issue a decision settling the matter by deciding on its substance (B. Adamiak, J. Borkowski, "Code of Administrative Procedure. Commentary 7th edition, Publishing House C. I1. Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 (III SA / Kr 762/2007): "The procedure becomes redundant when one of the elements of the substantive legal relationship is missing, which means that the case cannot be settled by deciding on the substance ".

The determination by the public authority of the existence of the condition referred to in Art. 105 § I of the Code of Administrative Procedure obliged him to discontinue the proceedings, as there are no grounds for resolving the substance of the case, and further conduct of the proceedings in such a case would make it defective, significantly affecting the result of the case. Therefore, the present proceedings are irrelevant, and thus, it should be stated that the President of the Office is not authorized to issue a substantive decision in this case.

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

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 decision may be appealed against by the party to 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 entry fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2019-06-17