THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 19

February

2019

DECISION

ZSZZS.440.658.2018

Based on Article. 104 § 1 and art. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149) and art. art. 6 sec. 1 lit. f and art. 58 sec. 2 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 PP concerning irregularities in the processing of his personal data by F. sp.z o.o. involving the use of his voice in an announcement on a company phone number [...] and an e-mail address [...], President of the Office for Personal Data Protection

refuses to accept the request regarding the processing of personal data of Mr. P.P. in the scope of the e-mail address [...] by F. sp. z o.o .;

discontinues the proceedings as to the remainder.

JUSTIFICATION

The Personal Data Protection Office received a complaint from Mr PP, hereinafter referred to as the Complainant, regarding irregularities in the processing of his personal data by F. sp. e-mail address [...]. In the content of the complaint, the Complainant indicated that despite the lack of his consent and the provisions of the agreement between him and the Company, his personal data are still processed.

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

The complainant was a partner in the Company. After the sale of shares in the share capital and resignation from participation in the Management Board of the Company, on [...] .08.2018, he signed an Agreement with the Company, which obligated the Company to remove, inter alia, the voice recording from the verbal announcement played during the merger with the

above-mentioned telephone number and deactivation of the above-mentioned e-mail box.

In the explanations, the President of the Management Board of the Company indicated that the Company deactivated the above-mentioned e-mail address, and uses it only to send an automatic reply with the following text: "Ladies and Gentlemen, We would like to inform you that from [...] .08.2018 P.P. is not an employee of F. sp.z o.o., and his e-mail account is deactivated. Please send all correspondence to […]. Sincerely, F. " (original spelling).

The company also indicated that it had ceased to use the voice recording using the Complainant's voice on the company telephone and was currently using the voice announcement recording prepared by an external company.

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

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., El / 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 ".

In this case, the currently applicable provisions on the protection of personal data, i.e. 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), hereinafter: GDPR.

When referring to the use by the Company of the e-mail address containing the complainant's name and surname, the

following should be indicated. The evidence gathered in the case shows that the Company, as the former employer of the Complainant, still has the above-mentioned the e-mail address that was assigned to him in the performance of his duties, thus he is the data controller in accordance with art. 4 sec. 7 GDPR, which states that the data controller is the quotation "an entity that independently or jointly with others determines the purposes and methods of personal data processing". This case concerns data in the field of the so-called "Ordinary data", the processing of which is governed by Art. 6 sec. 1 and according to which the processing of personal data is allowed only if one of the conditions indicated in this provision is met. 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. Pursuant to Art. 6 sec. 1 lit. a, the basis for processing may be the consent of the data subject. In the case at hand, the Company does not have the Complainant's consent to the processing of his personal data in the form of an e-mail address [...]. Regardless of the consent of the data subject, the processing of personal data is permissible when the processing is necessary for the purposes of the legitimate interests pursued by the administrator (letter f). In addition, the processing of personal data must comply with the principles set out in Art. 5 sec. 1 GDPR. These principles include, among others, limiting the purpose of processing (letter b) as well as minimizing the data processed (point c). These principles require that the processing process is directed towards a specific, explicit and legitimate purpose, and that the scope of personal data processed for a specific purpose is limited to the minimum possible.

It should be pointed out that the Complainant and the Company were bound by an agreement according to which the Complainant, as a partner and vice-president of the Company, was responsible for running its affairs and contacting contractors. After the end of the cooperation, the Company uses the e-mail address of Mr. P. only to inform the contractors about the changes that have occurred in the governing bodies of the Company, which takes place by means of an automatic reply addressed to the contractor interested in contacting the Complainant. The announcement includes information that the Complainant is no longer employed by the Company and an indication of the e-mail address at which current representatives of the Company can be contacted. In the opinion of the President of the Office, this type of action can be treated as a legitimate interest of the data controller, within the meaning of Art. 6 sec. 1 lit. f GDPR. As indicated by both Art. 6 sec. 1 lit. f and recital 47 of the GDPR, the legitimate interests of the controller may constitute the basis for processing only if they override the interests or fundamental rights and freedoms of data subjects. Expectations as to the protection and primacy of

the interests and rights of data subjects should be reasonable. The President of the Office shares the opinion that the discussed prerequisite requires an in-depth analysis of the facts (see also: Chomiczewski, Witold. Legally legitimate interest as a premise legalizing data processing - the concept: LEX Legal Information System, available at: https: //sip.lex. pl / # / publication / 470099706). Firstly, the presence of the legitimate interest of the administrator should be assessed, which, as indicated above, is identified in the case at hand with the provision of information about the company's current authorities and the possibility of contacting them. The necessity to process personal data for this purpose should also be assessed, as well as the inclusion in the process of the principle of data minimization in connection with Art. 5 sec. 1 lit. c GDPR. In the case in question, it is necessary to protect the legitimate interest of the Company to inform the contractors who attempt to contact the Company via the e-mail address provided with the Complainant's details about the current governing bodies of the Company and the contact paths. Moreover, the ongoing processing takes place in compliance with the above-mentioned principles, in connection with the limited purpose of processing and the limitation of the scope of the Complainant's data being processed to the e-mail address consisting of the name and surname and information that he is no longer an employee of the Company. It should be noted that Art. 6 sec. 1 lit. f GDPR also requires that the legitimate interest of the controller override the interests and fundamental rights of the data subject. In the case at hand, it should be recognized that the interest pursued by the Company is of such nature. The data of the Complainant is used by the Company only in situations where the client makes an attempt to contact and only to indicate the current contact details of the Company. The e-mail address containing the complainant's name and surname is not actively used by the Company to attract new clients or indicate a relationship between the complainant and the Company. When assessing the superiority of the interests of one of the parties, the doctrine emphasizes the importance of, inter alia, the relationship between the data subject and the controller (see Chomiczewski, Witold. Legitimate interest as a premise legalizing data processing - the concept. LEX Legal Information System). In the case at hand, the complainant, as a former member of the management board of the Company, dealt with the clients and the matters of the Company. The consequence of this contact is the current processing by the Company of the complainant's e-mail address in connection with the need to maintain contact with customers. It should also be taken into account that this address is processed in a limited way, for information purposes only. The automatic reply also contains information that the Complainant is no longer an employee of the Company, which clearly indicates the lack of an ongoing relationship between the Complainant and the Company. In view of the above, it should be concluded that the condition of Art. 6 sec. 1 lit. f GDPR and

the processing of the Complainant's e-mail address should be considered compliant with the applicable provisions on the protection of personal data.

Regarding the use of the Complainant's voice by the Company in the voice announcement of the company telephone number [...], it should be noted that the President of the Personal Data Protection Office, acting on the basis and within the scope of competences conferred on him by the provisions of the GDPR, examines the factual and legal status as at the date of issue of the decision. decision. Therefore, due to the fact that the personal data of the Complainant, according to the collected evidence, are currently not processed by the Company, further proceedings in this respect should be considered redundant.

Pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), hereinafter referred to as the Administrative Procedure Code, when the proceedings for any reason have become redundant, the administration body issues a decision to discontinue the proceedings. The subject of the proceedings is related to the application by the public authority of the provisions of substantive administrative law. The doctrine indicates that the quotation: "the objectivity of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance. The condition for discontinuation of the proceedings may exist before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before the administrative authority. " (B. Adamiak, J. Borkowski, Code of Administrative Procedure. Commentary, C.H.Beck, Warsaw 2006, p. 489).

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure, obliges it, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because if this condition arises, there are no grounds for resolving the matter on the merits, and continuing the proceedings in such a case would constitute its defective impact on the outcome of the case. The groundlessness of the proceedings may also result from a change in the facts of the case. At the same time, this authority shares the position expressed by the Supreme Administrative Court in the judgment of 25 November 2013, issued in the case no. act I OPS 6/1, in which the above-mentioned The court indicated the following: "In administrative proceedings governed by the provisions of the Code of Administrative Procedure, the rule is that the public administration body settles the matter by issuing a decision that resolves the matter as to its essence, according to the legal and factual status as at the date of issuing the decision." Moreover, the

assessment performed by the President of the Office serves in each case to examine the legality of the ongoing personal data processing. Apart from the competence of the President of the Office, it is possible to assess the legality of non-existent personal data processing processes. The proceedings conducted by the President are aimed at restoring the lawful state by issuing an instruction under Art. 58 sec. 2 GDPR. However, if the processing of personal data does not exist, it is not possible to assess its legality, which makes it impossible to establish the need for restoration to lawfulness.

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. 58 of the GDPR, on the basis of which the supervisory authority may issue a warning to the controller or processor regarding the possibility of infringement of the provisions through planned processing operations (Article 58 (2) (a)), issuing reminders to the controller or processor in the event of a breach of this provision by processing operations (Article 58 (2) (b), ordering the controller or processor to comply with the data subject's request (Article 58 (2) (c)), ordering the controller or the processor to adapt the processing operation to the applicable law (Article 58 paragraph 2 (d), ordering the controller to notify the data subject of a breach (Article 58 (2) (e), imposing a temporary or total limitation of processing (Article 58 (2) (f)), ordering rectification or deletion of data, restriction of data processing, ordering notification of these activities Riders to whom the data were disclosed (Art. 58 sec. 2 lit. g), imposing an administrative fine (Article 58 (2) (i), ordering the suspension of data flows to a recipient in a third country or an international organization (Article 58 (2) (j)).

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

The decision is final. Based on Article. 7 sec. 4 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) and in connection with joke. 13 § 2, art. 53 § 1 and article. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2017, item 1369, as amended), the party has the right to lodge a complaint against this decision with the Provincial Administrative Court in Warsaw, in within 30 days from the date of delivery of this decision, via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, 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.

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