

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

June

2019

DECISION

ZSPU.440.339.2018

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. 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) in connection with art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws, item 1000, as amended) and art. 57 sec. 1 lit. a) and f) and art. 6 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 (Journal UE L 119 of 04/05/2016, p. 1, as amended) after conducting administrative proceedings regarding the complaint of Mr. LW for the disclosure of his personal data in the field of name, surname and address by Starost S. Mr. A.Ł. - President of the Personal Data Protection Office

refuses to accept the request.

Justification

The President of the Personal Data Protection Office [formerly the Inspector General for Personal Data Protection] received a complaint from Mr. L.W., hereinafter referred to as the Complainant, about the disclosure of his personal data in the field of name, surname and address by Starost S. to Mr. A.Ł. The complainant indicated: "On [...] -04-2017 I submitted a letter informing about irregularities on the plot of land at Mr. Ł. to me, to the addressed Office and to Mr. Ł. with my address details. Did the clerk from the County Office sending the letter (...) have the right to disclose my personal data and address, first of all, to the person of Mr. Ł. informing him that it was I who reported the irregularities on his property "[spelling consistent with the original - footnote of the President of the Personal Data Protection Office].

The President of the Personal Data Protection Office (UODO) conducted explanatory proceedings in the course of which he obtained explanations from the Staroste and established the following factual circumstances.

In a letter of [...] April 2017 to the Poviast Starosty in S., the applicant informed about the irregularities in the plots of land by Mr. A.Ł. in K. No. [...] and [...] precinct [...] concerning infringement of environmental protection and construction law. The complainant requested that "the case be taken into account and the abovementioned lawfulness should be checked as an authority authorized to do so, and that it should be brought to its original and proper state". The complainant remarked: "Due to the fact that I am a private person, I am asking for discretion because I am afraid of revenge, besides, there is the so-called protection of personal data contained in my letter in accordance with the Act of August 29, 1997 on the Protection of Personal Data (...). Please inform me by letter about the way of settling the matter ".

The staroste decided that he was not the competent authority to consider the above-mentioned of the complainant's letters, and provided them by letters of [...] May 2017, pursuant to Art. 65 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as the Code of Administrative Procedure: changes in the course of the river K. on plot no. [...] precinct K. (point 1 of the complainant's letter), b) to the County Building Supervision Inspector in S. - in the part concerning the illegal construction of a concrete swimming pond with an area of [...] M2 on plots no. [...] And [...] district K. (point 2 of the complainant's letter), c) the commune administrator of K. in the part concerning the discharge of sewage from the property located on plot no. [...] District K. (item 3 and 4 letters from the complainant).

The starost explained: "In the conclusion of the notifications about the transfer of the application according to competence contains the personal data of the complainant in the field of name, surname and address in order to enable the identification of the submitted application. Notifications about the transfer of the application according to competences were sent to the addressees, the applicant and Mr. A.Ł., who was accused of the allegations and who in these proceedings has the status of a party within the meaning of Art. 28 of the Code of Administrative Procedure. The subjectivity of the application indicated that the scope of the allegations concerned its legal interest. (...) notification of transfer pursuant to Art. 65 of the Code of Administrative Procedure, were not processed in the IT system and published in the Public Information Bulletin ".

The President of the Personal Data Protection Office considered the following.

Pursuant to Art. 160 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended), proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, are conducted by the President of the Office Personal Data Protection (section 1) pursuant to the

Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), in accordance with the principles set out in the Act of June 14, 1960 The Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) (section 2). The activities performed in the proceedings referred to in para. 1 remain effective (section 3). The Act of May 10, 2018 on the protection of personal data - in accordance with its art. 176 - entered into force on May 25, 2018.

From May 25, 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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 / WE (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), hereinafter referred to as the GDPR. This procedure - initiated and not completed before May 25, 2018 - is conducted on the basis of the Act of August 29, 1997 on the protection of personal data with regard to the provisions governing the administrative procedure, and in the scope determining the legality of the processing of personal data - on the basis of the GDPR.

The subject of these administrative proceedings is the allegation of disclosure of the complainant's personal data by Starost S. to an unauthorized person.

The principle of legality is regulated in Art. 5 sec. 1 lit. a) GDPR, which states that personal data must be processed lawfully, fairly and in a transparent manner for the data subject ("lawfulness, fairness and transparency"). Art. 6 of the GDPR details and gives specific normative content to the above-mentioned basically. Due to the constitutionally regulated principle of legality, according to which public authorities (Starosta S. in this case) act on the basis and within the limits of the law, Art. 6 sec. 1 lit. c) and e) GDPR. With the above-mentioned of the provision that processing is lawful only in cases where - and to the extent that - c) processing is necessary to fulfill the legal obligation incumbent on the controller; 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.

The evidence in the case shows that the complainant's personal data in the field of name, surname and address, contained in the letter of [...] May 2017 to the Poviast Starosty in S. Department [...], constituting a notification of irregularities on the plots of A.Ł. in K. no. [...] and [...] precinct [...] concerning infringement of environmental protection and construction law regulations, were made available by the Starost not only to entities to which the complainant's letter was submitted according to their jurisdiction pursuant to Art. 65 § 1 of the Code of Administrative Procedure (the Board of Melioration and Water Facilities of the Province [...], the County Building Supervision Inspector in S. and the Head of the Commune of K.), but also Mr. A.Ł.

The reasons for disclosing to Mr. A.Ł. the complainant's personal data. Pursuant to Art. 28 of the Code of Administrative Procedure, a party to administrative proceedings is anyone whose legal interest or obligation is related to the proceedings or who requests the actions of an authority because of their legal interest or obligation. It should be noted that the status of a party to administrative proceedings pursuant to Art. 28 of the Code of Administrative Procedure, Mr. A.Ł. only in the event of initiation of administrative proceedings by the entity (entities) to whom the Staroste S. the applicant's letter. It should be noted that the administrative procedure to investigate whether there was a breach of environmental protection and construction law regulations by Mr A.Ł. would be conducted against him ex officio and he would be a party to such proceedings. On the other hand, the status of a party to such proceedings would not be enjoyed by the Complainant, who merely notified the authority entitled to verify these allegations about potential violations. However, it does not appear from the case files that the Complainant, when demanding to take specific actions, did so because of his legal interest or obligation.

It should be emphasized that the provisions of the Administrative Procedure Code provide public administration bodies with instruments to investigate irregularities reported by residents by initiating proceedings ex officio, without disclosing the source of information. Pursuant to Art. 61 § 1 of the Code of Administrative Procedure, administrative proceedings are initiated at the request of a party or ex officio. It should be emphasized that conducting the proceedings ex officio excludes the possibility of informing the notifying person about potential violations about the findings and the manner of examining the case, because he or she is not entitled to the status of a party to such proceedings, therefore he is not informed about its course and results.

In addition, it should be noted that the complainant indicated in the above-mentioned writing: "Due to the fact that I am a private person, I am asking for discretion, because I am afraid of revenge, besides, there is the so-called protection of personal data contained in my letter (...)".

Because the above-mentioned the disclosure of the Complainant's personal data has already taken place, therefore - despite the finding that it was done without a legal basis - it is not possible to restore the lawful state in this case before the disclosure. In such situations, the President of the Personal Data Protection Office, pursuant to Art. 52 of the Act of 10 May 2018 on the protection of personal data may refer to state bodies, local government bodies, state and municipal organizational units, non-public entities performing public tasks, natural and legal persons, organizational units that are not legal persons and other entities to ensure effective protection of personal data.

By using the above-mentioned powers, the President of the Personal Data Protection Office (UODO) addressed an application

to the Staroste to take appropriate actions to ensure compliance of the processing of personal data by Starost S. with applicable law in order to eliminate in the future situations such as the one indicated in this case, i.e. disclosing personal data to unauthorized persons.

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, from this decision, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. 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 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.

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