

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 16

April

2019

## DECISION

ZSPU.440.131.2019

Based on Article. 104 § 1 of the Act of 14 June 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 2018, item 1000, as amended) in connection with joke. 12 point 2, 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. 57 sec. 1 lit. a) and f) and Art. 6 sec. 1 lit. c) and f) and art. 28 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 data) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2) after conducting administrative proceedings regarding the complaint of Mr. ID, rel. in G., concerning irregularities in the processing of his personal data by P. Sp. z o.o., based in G., President of the Personal Data Protection Office 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 Mr. I. D. in G., hereinafter referred to as the Complainant, regarding irregularities in the processing of his personal data by P. Sp. z o.o., based in G., hereinafter referred to as the Company. In the content of the above-mentioned of the complaint The complainant alleged in particular that on [...] June 2017 he inspected the documentation of the housing association "K." at the registered office of the Company. w G., seated in G., hereinafter referred to as the Community. During the above-mentioned the activity had doubts as to the proper method of securing his personal data by the Company, because the Company's representative participated in this activity in the person of a legal advisor, who did not show any authorization to process personal data, and moreover, no protocol was drawn up for the indicated activity that would allow for the identification of the documents made available to him . Moreover, the complainant alleged that the Company, as the manager of the

Community, does not have the required documentation for the processing of personal data, such as the security policy and data system management instructions, records of authorized persons and authorizations.

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

The applicant is a member of the Community.

The company is the administrator of the Community on the basis of an agreement concluded with the Community pursuant to Art. 18 sec. 1 of the Act of June 24, 1994 on the ownership of premises (Journal of Laws of 2018, item 716, as amended) - the Company's letter of [...] September 2018 addressed to the President of the Personal Data Protection Office - in the files issues.

The Company processes the Complainant's personal data to the extent resulting from the Statement on the data of the owner of the premises and the method of delivery of correspondence, i.e. name, surname, telephone number, address of the premises, postal and electronic mailing address for the proper management of the common property - the Company's letter of [...] September 2018, addressed to the President of the Personal Data Protection Office - in the case file.

On [...] June 2017, a meeting with the Complainant's participation was held at the Company's seat, attended by a legal advisor.

The attorney-at-law was authorized to represent the Company, including participation in the meeting in question. During the meeting, the Complainant was provided with the technical documents of the real estate - the Company's letter of [...] September 2018 addressed to the President of the Office for Personal Data Protection - in the case files.

September 2018 addressed to the President of the Office for Personal Data Protection - in the case files.

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

At the outset, it should be noted that on May 25, 2018, with the entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), the General Office The Personal Data Protection Inspector has become 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) 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). All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1-3) of the Act of May 10, 2018 on the protection of personal data).

Pursuant to Art. 18 sec. 1 of the Act of August 29, 1997. In the event of violation of the provisions on the protection of personal data, ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementation , updating, rectification, disclosure or non-disclosure of personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data.

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 data) (Journal of Laws EU.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), hereinafter referred to as the GDPR, without prejudice to other tasks set out pursuant to this Regulation, each supervisory authority on its territory monitors and enforce the application of this Regulation (point a) and handle complaints lodged by the data subject or by a body, organization or association in accordance with Art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to continue investigations or coordinate actions with another supervisory authority (point f).

In turn, according to art. 6 sec. 1 GDPR, processing is lawful only in cases where - and to the extent that - at least one of the following conditions is met: a) the data subject has consented to the processing of his personal data in 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.

Considering the Complainant's allegation that his personal data was inadequately secured by the Company, it should be stated that he was not confirmed by the evidence in the case. During the meeting referred to in the complaint, the Complainant's data was not disclosed to unauthorized persons. According to the statement of the Company, the legal advisor acted within the

scope of the authorization granted to him by the Company. In the event of transfer of data to a professional representative representing the interests of the principal, we are dealing with the processing of data by the representative acting on behalf of the personal data administrator, within the limits of the authorization granted to him and not for his own purposes, but for the purposes of the data administrator. The activity of a legal advisor is also based on Art. 29 of the GDPR, according to which the processor and any person acting under the authority of the controller or the processor and having access to personal data process them only at the request of the controller, unless required by EU law or the law of a Member State. It should be noted that in accordance with Art. 3 sec. 1 of the Act of 6 July 1982 on legal advisers (Journal of Laws of 2018, item 2115, as amended), a legal adviser is obliged to keep secret everything that he or she learned in connection with granting legal aid. On the other hand, the basis for the processing by the Company of the personal data of the Complainant as a member of the Community is an agreement concluded by the Company with the Community specifying the manner of managing the common property, the admissibility of which is provided for in Art. 18 sec. 1 of the Act of June 24, 1994 on the ownership of premises (Journal of Laws of 2018, item 716, as amended). According to this provision, the owners of the premises may, in the agreement on establishing separate ownership of premises, or in the agreement concluded later in the form of a notarial deed, specify the manner of managing the common real estate, and in particular may entrust the management to a natural or legal person. The Community entrusted the administration with the Company, which, pursuant to Art. 28 GDPR has become a processor. Thus, it should be stated that the Company acts on behalf of the Community, and therefore the Community is the administrator of the Complainant's personal data within the meaning of Art. 4 sec. 1 point 7 of the GDPR, and the Company is a processor within the meaning of art. 4 sec. 1 point 8 of the GDPR.

It should also be pointed out that the validity of the entrustment agreement may be questioned before a common court, but for this purpose the Complainant would have to obtain the consent of other members of the Community, as the Community is the entity that concluded the agreement with the Company. On the other hand, the complainant is part of that entity.

In summary, the Complainant's personal data is lawfully processed both by the Community and the Company. The Community processes the complainant's personal data pursuant to Art. 6 sec. 1 lit. c and f of the GDPR, and the Company based on an agreement on entrusting the management, i.e. in accordance with art. 28 GDPR.

Referring to the allegations regarding the lack of the required documentation for the processing of personal data, i.e. the security policy and instructions for managing the IT system, as well as the records of authorized persons and authorizations, it

should be noted that these issues cannot be the subject of an individual complaint, due to the nature of the in such information documentation. Such documentation should be treated as internal documents made available only to a limited group of persons, only to those who need it in connection with the tasks entrusted to them and only to those external entities that demonstrate that they are legally entitled to obtain it. Comprehensive examination of the procedures adopted by the personal data administrator in the above-mentioned scope may therefore be performed by the authority ex officio, because it has an impact on the processing of data of an unlimited group of people, and their disclosure may have a detrimental effect on the performance of tasks by a specific entity in the field of data processing security. Providing the security policy or IT system management instructions is associated with the disclosure of the personal data security used. For this reason, it may affect the effectiveness of personal data protection.

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

Based on Article. 160 sec. 1 and 2 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) in connection with joke. 21 sec. 1 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 joke. 129 § 2 and art. 127 § 3 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), a party dissatisfied with this decision has the right to submit President of the Office for Personal Data Protection of the request for reconsideration of the case (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). If a party does not want to exercise the right to submit an application for reconsideration, it has the right, pursuant to Art. 52 § 3 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302, as amended) to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw within 30 days from the date of delivery to her side. The complaint is lodged through the President of the Personal Data Protection Office. The entry fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs.

2019-04-17