

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 10

of December

2018

DECISION

ZSPR.440.783.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2016, item 23, as amended) in connection with Art. 160 sec. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000), art. 12 points 2 Art. 22 in connection with Art. 33 paragraph 1 and art. 32 sec. 1 points 1-5a of the Act on the Protection of Personal Data of August 29, 1997 (Journal of Laws of 2016, item 922), after conducting administrative proceedings regarding the complaint of Mr. T. B., for the refusal to fulfill the information obligation under Art. 33 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922), by B. S.A., President of the Office refuses to accept the request.

Justification

The Bureau of the Inspector General for Personal Data Protection received a complaint from Mr. T. B. (hereinafter referred to as: the Complainant) about the refusal to fulfill his information obligation under Art. 33 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922) (hereinafter: the Act), by B. S.A., (hereinafter: B. S.A.).

In the content of his complaint of [...] March 2016, the Complainant indicated that in February 2016 he asked B. S.A to provide information on the personal data processed by that entity pursuant to Art. 33 of the Act, in response to which it obtained the position of BSA of [...] February 2016, from which it follows that BSA makes the provision of information regarding the personal data held and processed subject to obtaining additional information, including additional personal data in accordance with the form sent . In the content of his complaint, the complainant informed that, due to the fact that BSA in the above-mentioned letter did not indicate that there were any doubts as to the identity of the person requesting information, which could justify the need to perform additional verification or verification activities, the complainant sent to BSA for the purpose of avoid doubts as to the identity of your PESEL number, which identifies the unit from the set of people with the same name and surname. The applicant pointed out that B. S.A nevertheless maintained his refusal to comply with the information obligation, albeit not

expressly stated, and sent the applicant an internal document called [...]. According to the Complainant, B. S.A makes its obligation to provide information on the processed personal data conditional on the provision of additional data, which the Complainant does not want to provide and which do not need to be identified. The purpose of the request from the authorized person to provide additional information was defined by B. S.A as "eliminating the risk of disclosing information covered by banking secrecy to an unauthorized person". The complainant also pointed out that he had already identified himself with the PESEL number, in addition, at any stage B. S.A did not argue that the request for additional data according to the attached form served any purpose that could be justified by the Act. The complainant also added that the data controller is obliged to answer the questioner within 30 days. The Act does not give the administrator the right to request additional personal data from the questioner, to condition the answer with obtaining such data, or to refuse to provide an answer. The complainant asked for an inspection of the correctness of personal data processing by B. S.A, including the security of the processed data and the purpose for which they are collected, as well as the rules and procedure for fulfilling the information obligation; B. S.A's obligation to provide the requested information to the Complainant and, in the event that it is found that the action or omission of the head of an organizational unit, its employee or another natural person being the data controller meets the criteria of an offense specified in the Act, a notification of the commission of the offense to the body appointed to prosecute crimes. In addition, in connection with the supplement to the complaint sent by the Complainant of [...] April 2016, the Complainant pointed out that by refusing to provide information or making it conditional on providing BSA with additional information such as PESEL number or ID card number, the applicant did not verify the person, and only requests additional data. As indicated, one cannot speak of any verification, single or double, but only a request for data and that B. S.A cannot be sure whether it provides information to an authorized person on this basis. It can only be sure that the person who made the inquiry has information about the PESEL number and ID card of the data subject. The complainant pointed out that B. S.A was not entitled to perform such "verification", especially as it was not of a real identity-verifying nature, but only the possession of certain data to which many people had access. The complainant pointed out that the obligation contained in Art. 36 sec. 1 of the Act, the controller should implement it in a way that ensures actual and not illusory protection against data falling into the wrong hands. Additionally, in the opinion of the Complainant, the fulfillment of this obligation should not depend on the receipt of additional data from the applicant. In the special situation, when the applicant has not used banking services, B. S.A's practice leads to the acquisition of personal data from the applicant, which the applicant may not want to provide to B. S.A.

In order to consider the application in question, the President of the Personal Data Protection Office (previously: the Inspector General for Personal Data Protection) conducted an explanatory proceeding in which he established the following factual circumstances.

B. S.A in its explanations of [...] October 2016 indicated that the Complainant's personal data are processed in the scope of credit inquiries submitted by banks pursuant to Art. 105 paragraph. 4 of the Banking Law of August 29, 1997 (Journal of Laws of 2017, item 1876) - (hereinafter referred to as: the Banking Law), credit obligations pursuant to Art. 105 paragraph. 4 in conjunction with Art. 105 a sec. 1 of the banking law; credit obligations pursuant to Art. 105 a sec. 4 and 5 of the Banking Law and customer management inquiries.

B. S.A indicated that he had received the complainant's request for compliance with his information obligation under the Act. In response to the above-mentioned request of B. S.A. asked the Complainant to supplement the application by providing the number of the identity document, which is necessary for the process of identifying a specific person in the B. S.A. database. After receiving the data in question, B. S.A, by letter dated [...] March 2016 (the letter was sent on [...] March 2016), sent to the Complainant information about his data processed in the B. S.A. data filing system.

In addition, B. S.A in its supplementary explanations of [...] February 2017 indicated that, acting on the basis of the Banking Law and the Personal Data Protection Act, pursuant to Art. 26 points 1 point 4 of the Act, the data controller processing the data should exercise due diligence to protect the interests of the data subjects, and in particular is obliged to ensure that the data is stored in a form that allows the identification of the persons to whom they relate. At the same time, B. S.A indicated that pursuant to Art. 36 points 1 of the aforementioned Act, the data controller is obliged to apply technical and organizational measures ensuring the protection of personal data being processed, appropriate to the threats and categories of data subject to protection, and in particular, should protect the data against disclosure to unauthorized persons, or removal by an unauthorized person. B. S.A pointed out that, in connection with the above, procedures aimed at the maximum protection of the data contained in the database, as well as the procedures for making them available, have been introduced. The creation of these procedures allows for the full fulfillment of the information obligation towards persons submitting inquiries.

As explained by B. S.A, it was indicated that the need to provide such data as name and surname, address, PESEL number, or series and number of an identity document, does not worsen the situation of persons requesting B. S.A to disclose their data. As indicated, this is a way to ensure maximum security of the data sharing process. Failure of a specific person to

provide the above-mentioned data to a large extent, it makes it impossible to fulfill the information obligations on the part of B. S.A. Databases of B. S.A. contain the data of millions of natural persons, and the search scheme for individual persons in the database requires providing a PESEL number and an identity document number. As indicated, this prevents disclosure of the data of another person with the same name and surname, and thus causing harm to a third person.

B. S.A in its supplementary explanations of [...] February 2017 indicated that the complainant had received a report (i. U.), a copy of which was not available to B. S.A.

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

First of all, it should be noted that when the provisions of the Data Protection Act of 2018 [1] entered into force, i.e. on May 25, 2018, the Office of the Inspector General became the Office for Personal Data Protection. Pursuant to Art. 160 sec. 1 of the Data Protection Act of 2018, 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. Pursuant to Art. 160 sec. 2 of this Act, the proceedings referred to in para. 1, is carried out on the basis of the Act on Data Protection of 1997, in accordance with the principles set out in the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) [2]. However, according to Art. 160 sec. 3 of this Act, the activities performed in the above-mentioned the proceedings remain effective.

At the outset, it should be noted that the Inspector General, when issuing an administrative decision, is obliged to make a decision based on the actual state of affairs at the time of issuing this decision. Such a position is confirmed by numerous judicial decisions. For example, the judgment of the Supreme Administrative Court in Warsaw of October 4, 2000, file ref. Act V SA 283/00, where it was stated that "It is necessary to indicate (...) the need to apply the norms of substantive law in force on the date of the decision. It should be clearly emphasized that the provisions of the Code of Administrative Procedure do not bind the date of initiation of the proceedings on the factual and legal grounds for examining the case. The decisive factor in this respect is the state in force on the date of issuing the decision ". Additionally, as the doctrine points out, "the 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 objective 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).

At the time when the complaint was received by the Inspector General for Personal Data Protection, the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) was in force - hereinafter referred to as the Act, therefore On the basis of the collected evidence, the President of the Office assessed the controller's behavior in the context of the above-mentioned Act.

The subject of the administrative proceedings conducted in the present case is the failure to fulfill the information obligation towards the Complainant, referred to in Art. 33 of the Act and requesting too much information to verify the applicant, thus refusing the Complainant to fulfill the above-mentioned information obligation.

Pursuant to the aforementioned provision, at the request of the data subject, the data controller is obliged, within 30 days, to inform about his or her rights and provide, with regard to his personal data, the information referred to in art. 32 sec. 1 items 1-5a of the Act. In accordance with paragraph 2 of this provision, at the request of the data subject, the information referred to in para. 1 shall be granted in writing.

The information obligation provided for in Art. 33 of the Act was aimed at providing persons whose personal data are processed with access to information about the circumstances of their processing.

The evidence in the case shows that the Complainant, referring to the right of each person, pursuant to the Act, to control the processing of data concerning him, asked B. S.A to provide information on his personal data collected.

In response to the above-mentioned B. S.A's request, in a letter of [...] February 2016, requested the Complainant to provide additional identification information, in particular first name (s), surname, address, ID card number and series and PESEL number, thus refusing to fulfill the information obligation. According to the collected evidence, the Complainant, in the letters of [...] February 2016 and [...] March 2016, provided additional data. Therefore, B. S.A, by letter of [...] March 2016, replied to the Complainant about his data processed in the B. S.A. data filing system.

It should be noted here that B. S.A fulfilled the obligation to inform the Complainant referred to in Art. 33 of the Act.

Regarding the issue of requesting additional information to verify the applicant, it should be indicated that the verification of the

person submitting the application for fulfillment of the information obligation is primarily to confirm that the request is actually made by the person who is actually entitled to do so, i.e. the person to whom they relate. personal data. The collected evidence shows that the B. S.A databases contain the data of millions of natural persons, and the search scheme for individual persons in the database requires the provision of a PESEL number and an identity document number. Therefore, double verification using the above-mentioned data is to prevent someone only claiming to be the applicant. Additionally, as mentioned in the literature on the subject, "(...) In Art. 33, the manner of exercising the information rights specified in Art. 32. Information is provided at the request of the data subject. The O.d.o. Act, as well as the implementing regulations issued on its basis, do not specify the template of the request for information by the data controller. Act on o.d.o. Neither does it specify the form of the application, which could mean that it may be submitted in any form, e.g. in writing, by e-mail, by phone. However, the application should be submitted in such a way that the data controller can identify the applicant. Determining the identity of the applicant is the responsibility of the data controller, which is a manifestation of his special diligence. "(A. Drozd" Act on the protection of personal data. Comment. Forms of letters and regulations "Lexis Nexis 2008; 4th edition)

Article 33 of the Act did not specify any specific requirements to be met by the application addressed to the administrator. It should be noted that the administrator was charged, inter alia, with the obligation to properly secure the data in accordance with Art. 36 sec. 1 of the act. As stated in the literature on the subject, "These tasks should be carried out by applying appropriate, it should be understood: effective, technical and organizational measures. The legislator does not prejudge what these measures should be. They can be of various types (...). Thanks to them, the administrator should eliminate the occurrence of (...) harmful events [referred to in Art. 36 of the Act - perm. GIODO], and if it is impossible - minimize the risk of their appearance. (J. Barta, P. Fajgielski, R. Markiewicz "Personal data protection. Comment." Wolters Kluwer Polska sp. Z o.o., 5th edition, Warsaw 2011 p. 619).

The practice of requesting additional verification data may seem too restrictive, but it cannot be considered excessive in the presented situation. The request for additional identification data is aimed at maximum protection of the data itself in the database, as well as the procedures for making them available. Such protection is aimed at preventing disclosure of data to an unauthorized person, information processed by B. S.A and constituting banking secrecy. Therefore, the mere provision of data requested pursuant to Art. 33 of the Act, should take place after prior, reliable verification of the applicant's identity. Double verification with the PESEL number as well as the series and number of the ID card allows to establish the identity of the

applicant in a way that does not raise any doubts. It should also be emphasized that when providing such important information, B. S.A. should pay special attention and be sure that the information provided is made available to an authorized person.

In the light of the above, the President of the Office sees no reason to state that the provisions of the Act on the Protection by Processing Excessive Data in relation to the pursued purpose have been breached. Therefore, it is justified for the President of the Office to issue a decision refusing to accept the Complainant's request.

In this factual and legal state, the Inspector General for Personal Data Protection resolved as in the sentence.

Based on Article. 127 § 3 of the Code of Administrative Procedure, 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.

[1] the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) (hereinafter referred to as the Data Protection Act of 2018;

[2] Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) (hereinafter referred to as the Administrative Procedure Code).

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