THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 16

April

2019

DECISION

ZSPU.440.636.2018

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) in connection with joke. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), art. 57 sec. 1 points a) and f), art. 5 sec. 1 lit. a) and c) 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 Ms MI, residing in in [...], for the processing of its personal data by the Mayor [...], based in [...], the President of the Personal Data Protection Office refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (hereinafter referred to as the President of the Office) received a complaint from Ms M. I., residing in in [...] (hereinafter referred to as the Complainant), for the processing of her personal data by the Mayor [...], based in [...] (hereinafter referred to as the Mayor).

In the content of the complaint, the complainant indicated that the quotation: “On […] I lodged a complaint with the Mayor […] against the action of the Director of the Municipal Social Welfare Center […] (…). (...). As a result of many months of waiting for a response from the Mayor, I authorized the City Councilor [...] to intervene in the above issue (...). On […] I submitted another letter, this time to the Audit Committee of the City Council […], in which I am asking for the initiation of the procedure for the inactivity of the Mayor […] in relation to the complaint I submitted (…). (...) On [...] in another newspaper, i.e. [...] an authorized interview with the Mayor appeared without my knowledge, who being the administrator of my personal data (since I lodged my complaint on [...]) - made it public without my consent and disclosed to an unauthorized person, ie the editor-in-chief of the newspaper [...] ”.

I. The facts

On the basis of the collected evidence, the President of the Office established the following facts:

The applicant complained to the Mayor about the activity of the Director of the Municipal Social Welfare Center in […]. In that complaint, the applicant raised numerous circumstances related to her employment with MOPS in [...], including, inter alia, regarding the termination of her employment contract;

The applicant then lodged a complaint with the City Council [...] about the Mayor's inactivity while examining the above-mentioned complaints. The complaint was examined by the City Council during the session of the City Council;

The Deputy Mayor, acting on behalf of the Mayor, disclosed to the Editor-in-Chief of the Tygodnik [...] the complainant's personal data, including the first name, surname and information regarding the termination of the applicant's employment relationship. The personal data in question was provided by the Vice Mayor during an interview for the Week [...] on the situation in MOPS in [...], as well as by providing Tygodnik [...] with correspondence containing non-anonymised personal data of the complainant (excerpt from Tygodnik [...] from [...] in the case file).

II. Legal justification

After considering the entire evidence collected in the case, the President of the Office stated that the Mayor had provided the personal data to the Editor-in-Chief of the Tygodnik [...] in a questionable manner [...] without any basis, i.e. without meeting any of the conditions for the legality of personal data processing, as specified in Art. 6 GDPR [1]. Thus, the Mayor violated the so-called the principle of legality referred to in Art. 5 sec. 1 lit. a) GDPR. However, the President of the Office refused to take into account the complainant's request and did not order the Mayor to restore the legal status, because as at the date of this decision, there is no violation of the provisions of the GDPR.

First of all, it should be noted that when the provisions of the Data Protection Act of 2018 [2] 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, 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 [3], in accordance with the principles set out in the Code of Administrative Procedure [4]. However, according to Art. 160 sec. 3 of the Data Protection Act of 2018, the activities performed in the above-mentioned the proceedings remain effective.

On May 25, 2018, the GDPR came into force, the provisions of which regulate issues related to the processing of personal data of natural persons. From that date, the President of the Office is obliged to apply the provisions of the GDPR to all administrative proceedings he conducts. When issuing a decision in a given case, the President of the Office takes into account the legal status in force at the time of issuing the decision.

Considering the above and the fact that the proceedings in this case were initiated at the time the 1997 Data Protection Act was in force, the President of the Office, when issuing a decision in this case, is obliged to take into account both the procedural provisions of the 1997 Data Protection Act and the GDPR. .

Pursuant to Art. 18 sec. 1 of the Act on Data Protection of 1997, in the event of a breach of the provisions on the protection of personal data, the General Inspector (currently the President of the Office) ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the lawful state, in particular in elimination of deficiencies.

According to one of the guiding principles resulting from the GDPR, each processing of personal data must be lawful. This means that the administrator - when processing personal data - must have at least one of the conditions set out in art. 6 GDPR.

The administrator is entitled to process personal data where, inter alia, processing is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (c) of the GDPR).

Pursuant to Recital 45 of the GDPR Preamble, if the processing is carried out in order to fulfill a legal obligation to which the controller is subject, the processing should be based on the law of the European Union or the law of a Member State. This Regulation does not require that there is a specific legal framework for each individual processing. It may be enough that a given legal regulation is the basis for various processing operations resulting from the legal obligation to which the controller is subject.

Notwithstanding the foregoing, it should be emphasized that personal data must in any case be processed in accordance with all the principles set out in Art. 5 GDPR, including with the principle of data minimization (Article 5 (1) (c) of the GDPR). This principle is expressed in the fact that personal data processed by a given administrator must be adequate, relevant and limited to what is necessary for the purposes for which they are processed.

Taking into account the subject of these proceedings, it should be noted that pursuant to Art. 3a of the Press Law [5], the provisions of the Act of 6 September 2001 on access to public information (Journal of Laws of 2018, items 1330 and 1669)

shall apply to the right of press access to public information.

Pursuant to Art. 1 clause 1 of the Act on access to public information [6], each information on public matters constitutes public information within the meaning of the Act and is subject to disclosure on the terms and in the manner specified in this Act. Pursuant to Art. 10 sec. 1 of the Act on Access to Public Information, public information that has not been made available in the Public Information Bulletin or the central repository is made available upon request. However, according to Art. 5 sec. 2 of the Act on access to public information, the right to public information is limited due to the privacy of a natural person or business secret. This restriction does not apply to information on persons performing public functions related to the performance of these functions, including the conditions for entrusting and performing functions, and in the event that a natural person or an entrepreneur resigns from their right.

Regarding the above-mentioned comments to the facts of the present case, it should be noted that the Mayor disclosed the complainant's personal data to the Tygodnik [...] in a questionable manner without any legal basis, i.e. without meeting any of the conditions for the legality of the processing of personal data, as specified in Art. 6 sec. 1 lit. a) - f) GDPR, including in particular it was not necessary to fulfill the legal obligation incumbent on the Mayor as the administrator (Article 6 (1) (c) of the GDPR). In the present case, the provisions of the law, including in particular the provisions of the Press Law and the Act on access to public information, did not grant the Mayor any rights or imposed an obligation on him to disclose the complainant's personal data in the questioned manner.

Undoubtedly, information on the functioning of MOPS constitutes public information within the meaning of the Act on Access to Public Information and as such is subject to disclosure under the procedure of this Act. Therefore, the mayor was obliged - at the request of Tygodnik [...] - to provide such information to Tygodnik [...] pursuant to Art. 3a of the Press Law. However, it should be clearly emphasized that in the present case - on the occasion of disclosing certain information constituting public information - the Mayor also disclosed to Tygodnik [...] the personal data of the complainant as a private person. Such disclosure was unacceptable both in the light of the provisions of the Press Law and the provisions of the Act on access to public information. Moreover, the Mayor, by providing the complainant's personal data to Tygodnik [...] in the questioned manner, breached the above-mentioned the principle of data minimization. The processing of the complainant's personal data in this case was inadequate and disproportionate to the purposes of the processing. In other words, the fact of the necessity to provide Tygodnik [...] with certain information on the functioning of MOPS did not in any way justify the Mayor's disclosure of

the complainant's unanonymised personal data in any way.

Bearing in mind the above, however, it should be noted that the President of the Office, acting on the basis and within the scope of the powers conferred on him by the provisions of the GDPR, when issuing a decision in a specific case, examines the factual and legal status as at the date of issuing a given decision. The findings of the President of the Office show that the disclosure of the complainant's personal data to the Tygodnik [...] by the Mayor in the questioned manner was a one-off action, which is currently not continued. Thus, as at the date of this decision, there is no breach by the Mayor of the provisions of the GDPR in the above-mentioned scope. Consequently, the President of the Office is not able to issue an administrative decision ordering the restoration of legal status in this case pursuant to Art. 18 of the Data Protection Act of 1997 in connection with joke. 160 sec. 2 of the Data Protection Act of 2018.

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

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery 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 Office (address: 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.

[1] 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 data protection) (Journal of Laws UE.L.2016.119.1 as amended) (hereinafter referred to as the GDPR)

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

[3] 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 Data Protection Act of 1997)

[4] Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) (hereinafter referred to as the Administrative Procedure Code).

[5] Act of January 26, 1984, Press Law (Journal of Laws of 2018, item 1914, i.e.) (hereinafter referred to as the Press Law)

[6] Act of 6 September 2001 on access to public information (Journal of Laws of 2018, item 1330, as amended) (hereinafter referred to as the Act on Access to Public Information)

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