

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 13

May

2020

DECISION

ZKE.440.11.2019

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended) and pursuant to Art. 160 sec. 1 and 2 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2019, item 1781) and art. 12 point 2, art. 22, art. 23 sec. 1 point 2 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. 6 sec. 1 lit. c) 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 and EU Official Journal L 127 of 23/05/2018, p. 2), in connection with Art. 105 paragraph. 4 and art. 105a paragraph. 1, 3, 4 and 5 and art. 70 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2019, item 2357, as amended), after administrative proceedings regarding the complaint of Mr. D. C., against the processing of his personal data by C. S.A. and their disclosure to unauthorized persons, 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. D. C. (hereinafter also referred to as the "Complainant") about the processing of his personal data by C. S.A. (hereinafter also referred to as "the Bank") and their making available by the Bank's employee to other banks.

In the content of the complaint, the complainant requested:

- 1) the Bank ceases to process the personal data of the Complainant obtained contrary to the provisions of the law,
- 2) the Bank's inspection of the compliance of the Complainant's personal data processing with the provisions on the protection of personal data, in particular with regard to unauthorized disclosure of his personal data,
- 3) punishing persons guilty of unauthorized disclosure of the Complainant's personal data to banks other than the one that

issued the Complainant, as a customer of the Bank, with a certificate of employment in order to verify his creditworthiness.

In the course of the investigation conducted in this case, the President of the Personal Data Protection Office established the following facts:

The Bank obtained the complainant's personal data on [...] September 2013 in connection with his application for a cash loan. On [...] September 2013, the Complainant submitted in writing a "Statement of the borrower Confirmation of data from the loan application No. [...]", indicating as the place of work: "S, position - financial advisor". Below, the Complainant has signed a declaration as follows [...].

On [...] September 2013, the Bank concluded a cash loan agreement No. [...] with the Complainant.

In the course of these proceedings, the Bank explained that doubts as to the veracity of the data on the employment and the earned income of the Complainant arose in the course of investigating the complaint of [...] February 2014, lodged by the Complainant with the Bank through K.

The basis for the verification of the Complainant's employment data, contained in the borrower's declaration of [...] September 2013, was Art. 70 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2019, item 2357, as amended).

The bank carried out the above-mentioned verification as follows: in a letter of [...] February 2014, he asked the S. Head Office (hereinafter: Head Office S.) whether Mr. D. C. was an employee of this Bank as a client advisor, and if so, during what period.

The Bank also sent such a letter on [...] February 2014 to Placówka S. (hereinafter: Placówka S.). In reply by letter of [...] February 2014, S. informed the Bank that as at [...] September 2013, Mr. DC was not employed by S. confirmed.

According to the Bank's explanations, in connection with the inquiry addressed to both the S. the employment certificate presented to the Bank was true.

The complainant paid off the credit obligation taken and the loan agreement was settled and the obligation expired on [...] February 2014.

In connection with the repayment by the Complainant of the above-mentioned liabilities, the Bank processed the Complainant's personal data pursuant to Art. 105a paragraph. 3 of the Banking Law, for the period specified in Art. 105a paragraph. 5 of the Banking Law, i.e. for a period of 5 years from the expiry of the obligation, i.e. in the case of a cash loan agreement of [...] September 2013 No. [...] to [...] February 2019.

In addition, the Complainant's personal data related to the above-mentioned contract have been moved to the so-called

"Statistical database" and are processed for the purposes of applying internal methods and other methods and models referred to in Part Three of Regulation No. [...] (Article 105a (4) of the Banking Law) for the period specified in Art. 105a paragraph. 5 of the Banking Law, i.e. for a period of 12 years from the repayment of the liability.

After analyzing the evidence collected in the case, the President of the Office for Personal Data Protection states as follows. On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data entered into force (Journal of Laws of 2019, item 1781), hereinafter also: "Act on the Protection of Personal Data of 2018 r. "

Pursuant to Art. 160 sec. 1-3 of the Act on the Protection of Personal Data 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 for Personal Data Protection on the basis of the Personal Data Protection Act of 1997 in accordance with the principles set out in the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended). At the same time, the activities performed in the proceedings initiated and not completed before the date of entry into force of the provisions of the Act on the Protection of Personal Data of 2018 remain effective.

From May 25, 2018, also 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 / EC (general regulation on the protection of personal data) (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, p. 2), hereinafter referred to as the "Regulation 2016/679 ".

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks specified under this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (point a) and considers complaints submitted by the data subject or by - in accordance with Art. 80 by Regulation 2016/679 - the entity, organization or association, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and results of these proceedings within a reasonable time (point f).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the actual state of affairs at the time of issuing this decision. 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 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). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 stated that: "when examining the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed as at the date of issuing the decision on the matter and whether it is done in a legal manner".

Regulation 2016/679 constitutes provisions on the protection of natural persons with regard to the processing of personal data and provisions on the free movement of personal data, and protects the fundamental rights and freedoms of natural persons, in particular their right to the protection of personal data (Article 1 (1) and (2) of Regulation 2016 / 679). This issue was adequately regulated by Art. 2 clause 1 of the Act on the Protection of Personal Data of 1997. In the light of the provisions of the above-mentioned legal act, the processing of personal data is authorized when any of the conditions listed in Art. 6 sec. 1 of Regulation 2016/679 (previously Article 23 (1) of the Personal Data Protection Act of 1997). These conditions apply to all forms of data processing listed in art. 4 point 2 of Regulation 2016/679 (previously Article 7 point 2 of the Personal Data Protection Act of 1997), including, in particular, their disclosure. These conditions are also equal to each other, which means that for the legality of the data processing process, it is sufficient to meet one of them.

The legal act regulating in detail the processing of personal data of bank customers is primarily the Banking Law. Therefore, the assessment of the processing of the Complainant's personal data in connection with the contract between him and the Bank should be made in conjunction with the provisions of this Act.

Pursuant to Art. 70 paragraph. 1 of the Banking Law, the Bank makes granting a loan conditional on the borrower's creditworthiness. Creditworthiness is understood as the ability to repay the loan taken together with interest within the time limits specified in the contract. The borrower is obliged to submit, at the bank's request, the documents and information necessary to assess this capacity. And, pursuant to Art. 70 paragraph. 4 above of the Act, the borrower is obliged to enable the bank to undertake activities related to the assessment of the financial and economic situation and to control the use and repayment of the loan.

Referring, therefore, to the Complainant's request regarding the legality of the currently conducted processing of his personal

data by the Bank, it should be noted that the Complainant's personal data were processed by the Bank until [...] February 2019 in the scope of information constituting banking secrecy in accordance with Art. 105 paragraph. 4 of the Banking Law.

Pursuant to this provision, banks may, together with banking chambers of commerce, establish institutions authorized to collect, process and make available to: banks - information constituting banking secrecy to the extent that this information is needed in connection with the performance of banking activities and in connection with the application of internal methods and other methods and models referred to in Part Three of Regulation No 575/2013; other institutions legally authorized to grant loans - information constituting banking secrecy to the extent to which such information is necessary in connection with granting loans, cash advances, bank guarantees and sureties; credit institutions - information constituting banking secrecy to the extent necessary to assess the consumer's creditworthiness, as referred to in art. 9 of the Act of 12 May 2011 on consumer credit; lending institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit - on the basis of reciprocity, information constituting respectively banking secrecy and information provided by loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit, to the extent necessary to assess the consumer's creditworthiness, as referred to in art. 9 of this Act, and credit risk analysis.

The Bank is currently processing the Complainant's personal data in connection with the conclusion of the cash agreement of [...] September 2013 No. [...], solely for the purposes of using internal methods and other methods and models referred to in Part Three of Regulation No 575/2013, to what is entitled under Art. 105a paragraph. 5 of the Banking Law, i.e. for a period of 12 years from the repayment of the liability.

The President of the Office for Personal Data Protection, examining the basis for disclosing the Complainant's personal data, concluded that in the above-described circumstances of the case in question, there were no grounds for formulating any order against the Bank. In this case, the basis for the disclosure of the complainant's personal data is Art. 70 of the Banking Law.

It should also be emphasized that the Bank did not verify the employment certificate provided by the Complainant at the time of signing the cash loan agreement No. [...], i.e. [...] September 2013. It did so only in connection with the complaint of [...] February 2014, filed by the Complainant to the Bank through K.

Regarding the Complainant's claim that the Bank's employees also shared his personal data with other Banks, it should first be pointed out that the President of the Data Protection Office does not have any legal instruments that would make it possible to offset the effects of the unauthorized disclosure of his personal data, in the opinion of the Complainant. This disclosure is an

irreversible fact in the sense that it is not possible to lead to the situation which would have occurred had the infringement not taken place. Moreover, the condition for issuing a decision by the authority is the existence of a state of violation of the right to personal data protection at the time of issuing the administrative decision. However, in the case at hand, if, in the opinion of the Complainant, the disclosure was incidental, there are no grounds to assume that the actions questioned by the Complainant would be repeated in the past. The President of the Personal Data Protection Office is not authorized to issue a warrant in this case regarding possible unauthorized processing (sharing) of the Complainant's personal data in the future. It should be emphasized that an administrative decision is a specific and individual act and always concerns a strictly defined, established and current state of affairs at the time of the ruling. The President of the Office is not authorized to issue a decision with regard to future and often hypothetical situations.

However, with regard to the Complainant's request that the President of the Personal Data Protection Office in the Bank conducts an inspection of the compliance of the processing of his personal data with the provisions on the protection of personal data, in particular with regard to disclosing the Complainant's data, it should be noted that data are not taken at the request of the person concerned. The control of the compliance of data processing with the provisions of the Act on the Protection of Personal Data (currently compliance with the provisions of Regulation 2016/679) is the autonomous competence of the President of the Personal Data Protection Office, and therefore is not carried out at the request of the person concerned. In the present case, the authority did not find any infringement that would become a reason for initiating ex officio proceedings. At the same time, I would like to inform you that if, in the opinion of the Complainant, a prohibited act was committed to his detriment, the Complainant may apply directly to the law enforcement authorities with an appropriate notification about the possibility of committing a crime and seek protection of his rights through proceedings before the law enforcement authorities and then before a common court.

Notwithstanding the foregoing, I would like to inform you that if, in the Complainant's opinion, his personal rights were infringed, which pursuant to Art. 23 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 1025, as amended), in particular health, freedom, honor, freedom of conscience, name or pseudonym, image, secret of correspondence, inviolability housing, scientific, artistic, inventive and rationalizing works, he may pursue his claims in this respect by means of a civil action brought before the locally competent common court. According to the content of Art. 24 § 1 and 2 above of the act, the person whose personal interest is threatened by someone else's action, may demand that such action be discontinued, unless it is not

unlawful. In the event of an infringement, he may also require the person who committed the infringement to perform the actions necessary to remove its effects, in particular, to submit a declaration of appropriate content and in an appropriate form. Taking the above into account, it should be concluded that there was no reason to issue an administrative decision ordering the restoration of the lawful state, therefore it is not justified to issue any of the orders referred to in Art. 18 of the Personal Data Protection Act of 1997 and in Art. 58 of the Regulation 2016/679.

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 Civil Procedure of the decision, the party has the right to submit 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 Personal Data Protection 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.

However, due to the state of epidemic in force on the date of the decision, pursuant to Art. 15zzr paragraph. 1 point 1 of the Act of March 2, 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374), the running of this period currently it will not start; it will start to run on the day following the last day of the epidemic or immediately following any possible epidemic threat.

2021-02-19