

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 27

May

2020

DECISION

ZKE.440.74.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, 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 2019, item 1781) in connection with joke. 12 point 2, art. 22, art. 23 sec. 1 points 1-3 and 5 and 31 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. 6 sec. 1 lit. a), b) c) and f), Art. 57 sec. 1 lit. a) and f), art. 28 and art. 29 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 and Journal of Laws UE L 127 of 23/05/2018, p. 2) in connection with joke. 15 sec. 2 of the Act of September 11, 2015 on insurance and reinsurance activities (Journal of Laws of 2019, item 381, as amended), after conducting administrative proceedings regarding the complaint of Mrs. WC, for the processing of her personal data by the SSA, President of the Personal Data Protection Office: refuses to accept the request.

JUSTIFICATION

The Inspector General for Personal Data Protection (currently the President of the Office for Personal Data Protection) received a complaint from Ms W. C., hereinafter referred to as "the Complainant", about the processing of her personal data by S. S.A., hereinafter referred to as "Towarzystwo Ubezpieczeń". In the content of the complaint, the complainant indicated that her data in the form of a telephone number and address of residence had been disclosed to unauthorized persons. The complainant informed that she had received a letter to her home address from a debt collection company which was claiming debts on behalf of the Insurance Company for unpaid car insurance premiums. The letter was addressed to a person living on her farm. At the same time, the complainant added that in order to clarify the situation, she contacted the hotline of S. S.A. During the conversation, she provided her telephone number only for the purpose of quoting, contacting me and S. S.A.

regarding my insurance and the situation that arose from it. " The applicant submitted that the quotation quoted "Mrs. from S. S.A. put my phone number as a contact person in the case of a debtor living on my farm, therefore I was attacked (by calling my phone number) various debt collection companies and courts ". The complainant clarified her complaint in a letter received by the Office of the Inspector General for Personal Data Protection on August 29, 2017, requesting that the following quote: "S. THERE ARE. by correcting its mistakes, it fully complied with Article 18 of the Act ".

On the basis of the evidence collected in the case, the President of the Office for Personal Data Protection established the following facts:

From the explanations of [...] December 2017 submitted by the Insurance Company, it appears that the complainant's personal data are processed in the files: B. and Ba. The personal data was obtained directly from the Complainant and its scope includes: name and surname, PESEL identification number, address details and contact details. The complainant's personal data are processed for the purpose of: "performance of insurance contracts, limitation of claims and fulfillment of legally justified purposes". The legal basis authorizing the Insurance Company to process the complainant's personal data is: the legal provision referred to in art. 23 sec. 1 point 2 of the Act of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "1997 Act", i.e. the Act of September 11, 2015. on insurance and reinsurance activities (Journal of Laws of 2019, item 381 as amended) and the Act of April 23, 1964 - Civil Code (Journal of Laws of 2019, item 1145, as amended)), hereinafter referred to as "Kc", the need to perform the contract (Article 23 (1) (3) of the 1997 Act), legally justified purpose of the data controller (Article 23 (1) (5) of the 1997 Act).

Moreover, the Insurance Company stated that the complainant's personal data had not been made available but entrusted for processing pursuant to Art. 31 of the 1997 Act to the following entities:

A. S.A. - in order to provide maintenance and IT services under the General Agreement for the provision of maintenance services of [...] August 2007,

A. Sp. z o.o. - for the archiving of documentation and its removal under the contract of [...] August 2012,

P. S.A. - in order to present the insured offer and conclude an insurance contract on the basis of an agency contract of [...] November 2012.

S. S.A. She also informed that the complainant quoted: "she filed a complaint (...) in connection with the received

correspondence related to debt collection activities. The debt collection letters were not addressed to the applicant, but to the debtor. The address of the complainant was indicated by the debtor in the submitted (...) insurance documentation ". S. S.A. denied that the complainant's phone number had been added to the debtor's policy and transferred to other entities, including those carrying out debt collection activities, and added that the quotation: "The complainant personally contacted the entity carrying out debt collection activities on behalf and for the benefit of the data controller - E. S.A. in order to clarify the situation ". To the explanations, the Insurance Company attached, inter alia, Mrs. W.C.'s request of [...] April 2014 for the conclusion of a farm insurance contract "[...]" (proof: application number [...] of [...] April 2014 for the conclusion of a farm insurance contract "[...]").

In these facts, the President of the Personal Data Protection Office considered the following.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o.", entered into force.

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

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 / WE (EU Official Journal L 119 of 04.05.2016, p. 1 and EU Official Journal L 127 of 23.05.2018, p. 2), hereinafter referred to as "Regulation 2016/679".

Pursuant to Art. 57 sec. 1 letter f) of Regulation 2016/679, without prejudice to other tasks specified under this Regulation, each supervisory authority on its territory shall consider complaints lodged by the data subject or by an entity, 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 pursue further proceedings or coordinate actions with another supervisory authority.

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted on the basis of the Act of 1997 (with regard to the provisions governing the administrative procedure) and on the basis of Regulation 2016/679 (with regard to the legality of the processing of personal data). The manner of conducting proceedings in cases initiated and pending before the date of entry into force of new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which "a public administration body assesses the actual state of the case according to the date of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance "(Commentary to Kpa - Journal of Laws 00.98.1071, M. Jaśkowska, A. Wróbel, Lex., EI / 2012).

In the light of the provisions of Regulation 2016/679, the processing of personal data is lawful when any of the conditions listed in art. 6 sec. 1 of the Regulation 2016/679 (equivalent to Article 23 (1) of the 1997 Act in force until 25 May 2018), i.e. when, inter alia:

the data subject has consented to the processing of his personal data for one or more specific purposes (similarly in Article 23 (1) (1) of the 1997 Act;

processing is necessary for the performance of a contract to which the data subject is a party, or to take action at the request of the data subject prior to entering into a contract (similarly in Article 23 (1) (3) of the 1997 Act);

processing is necessary to fulfill the legal obligation incumbent on the controller (similarly in Article 23 (1) (2) of the Act of 1997);

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 (by analogy in Article 23 (1) (5) of the 1997 Act).

These conditions apply to all forms of data processing, including 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 President of the Office established that Towarzystwo Ubezpieczeń had obtained the complainant's personal data in connection with her application of [...] April 2014 for the conclusion of a farm insurance contract "[...]". The legal basis for the processing of the complainant's data by the Insurance Company was art. 23 sec. 1 point 1, 2, 3 of the previously binding Act of

1997, the Insurance Company processed the complainant's data not only on the basis of her consent but also on the basis of the law, the necessity to perform the contract as well as the legally justified purpose of the data controller. Currently, the Insurance Company is processing the complainant's data pursuant to art. 6 sec. 1 lit. b) -c) and f) of Regulation 2016/679 in connection with art. 15 of the Insurance and Reinsurance Activity Act (Journal of Laws of 2019, item 381, as amended), hereinafter referred to as the "Activity Act" - in order to implement the insurance contract and in connection with Art. 118 of the Civil Code - for the limitation of claims.

The issue of processing the complainant's personal data on the basis of legal provisions was regulated in the Act of 11 September 2015 on insurance and reinsurance activity (Journal of Laws of 2019, item 381, as amended), hereinafter referred to as ". Pursuant to the provisions of the Act on the Activity, insurance companies collect personal data of clients in connection with the conclusion and implementation of insurance contracts, reinsurance contracts and insurance guarantee contracts. These provisions allow for shaping the content of the said contracts within the limits of the applicable legal provisions. In accordance with Art. 15 of the aforementioned Act, insurance companies provide insurance coverage on the basis of an insurance contract concluded with the policyholder (section 1). The insurance contract is voluntary, subject to the provisions of the Act of May 22, 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Office of Motor Insurers (section 2), (...) the general terms and conditions of the insurance and other forms of the contract are formulated unambiguously and in understandable (section 3), and their content is published by the insurance undertaking on its website (section 4). The provisions of the insurance contract, general terms and conditions of insurance and other contract templates shall be interpreted ambiguously in favor of the policyholder, the insured or the beneficiary under the insurance contract (section 5).

In connection with the matter at hand, the content of Art. 31 of the 1997 Act (under the provisions of the GDPR, its counterpart is now Art.28 and Art.29), according to which the controller may entrust another entity, by way of a written contract, with the processing of data (section 1), while the entity referred to in sec. 1, may process data only to the extent and for the purpose provided for in the contract (section 2), and prior to the commencement of data processing, it is obliged to take measures securing the data set, referred to in art. 36-39, and meet the requirements set out in the provisions referred to in Art. 39a. The entity is responsible for compliance with these provisions as the data controller (paragraph 3). A characteristic feature of the entrustment agreement is that the data controller does not have to personally perform activities related to the processing of

personal data. For this purpose, it may use the services of specialized external entities, commissioning them to perform the entire process of personal data processing, or only certain activities, e.g. collection or storage. In the event of the transfer of personal data, we deal with the processing of data on behalf of the administrator, within the limits specified in the data processing agreement and not for the processor's own purposes, but for the purposes of the data administrator. Importantly, when entrusting the processing of personal data, their administrator does not change.

Considering the above provisions of law, the President of the Office found the complaint of the complainant that her personal data had been disclosed to unauthorized persons as inaccurate, as the complainant's data had been entrusted for processing to entities such as A. S.A., A Sp. z o.o., P. S.A., pursuant to the aforementioned Art. 31 of the 1997 Act

Referring to the quotation of "adding the complainant's telephone number as a telephone number to contact the debtor's case", the President of the Office stated that he had not found confirmation in the collected evidence material of the case. The Society's explanations show that it was the complainant herself, as quoted: "she personally contacted the entity carrying out debt collection activities on behalf of and for the benefit of the personal data administrator, the company E. S.A. in order to clarify the situation ". The above is also indicated by the complainant's statement indicated in the complaint that she gave her telephone number as quoted above, in order to contact S. S.A. on (...) insurance and the resulting situation ".

The assessment carried out by the President of the Personal Data Protection Office in each case serves to examine the legitimacy of the referral to a specific subject of the order, corresponding to the disposition of art. 18 sec. 1 of the Act of 1997, aimed at restoring the lawful state in the process of data processing - it is therefore justified and necessary only insofar as there are irregularities in the processing of personal data.

In the opinion of the President of the Office for Personal Data Protection, there are no grounds to conclude that the complainant's personal data are processed by the Insurance Company in a manner inconsistent with the provisions on the protection of personal data, and therefore there was no prerequisite for the President of the Office to issue a decision ordering the restoration to legal status. .

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, 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 Personal Data Protection Office (address: ul. Stawki 2, 00-93 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.

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