

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

of December

2018

## DECISION

ZSPR. 440.913.2018

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) and pursuant to 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. 18 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and with Art. 12 in connection with joke. 15 of the Regulation of the European Parliament and of the EU Council 2016/679 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 (Journal of Laws UE L 119 of 04/05/2016, p. 1) and Journal of Laws UE L 127 of 23/05/2018, p. 1, as amended), after conducting administrative proceedings regarding the complaint of Mr. P. S, residing in in [...] for failure to fulfill the information obligation referred to in Art. 33 paragraph 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) by P. S.A. based in [...], the President of the Personal Data Protection Office

orders P. S.A. based in [...] fulfillment of the information obligation towards Mr. P. S. res. in [...] by providing the content of his personal data processed by P. S.A.

### Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Mr. P. S. Zam. in [...], hereinafter referred to as the Complainant, for failure to fulfill the information obligation referred to in Art. 33 paragraph 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922 and of 2018, item 138), hereinafter referred to as uodo 1997, by P. S.A. based in [...], hereinafter referred to as the Company.

In the content of the complaint, the complainant argued that the Company had not provided him with the information referred to in Art. 33 in connection with joke. 32 sec. 1 uodo 1997, and therefore breached the provisions of the above-mentioned the law.

In order to consider the application in question, the Inspector General for Personal Data Protection conducted an explanatory

procedure, in the course of which he established the following factual circumstances.

The company processes the complainant's data in the following sets: [...].

By letter dated [...] December 2017, the Complainant, within the scope of his right under Art. 33 paragraph 1 of the Act on the Protection of Personal Data, he requested to provide him with information about his personal data processed by the Company, by providing his personal data in a commonly understood form.

In a letter of [...] January 2018, the Company sent a letter to the Complainant in which it indicated the method and date of obtaining the Complainant's personal data, informed in what files the Complainant's personal data are processed, for what purpose and scope it processes the Complainant's personal data. This letter, however, did not contain the content of the Complainant's data (the Company's letter in the case files).

In this factual state, the President of the Personal Data Protection Office 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 Office The Inspector General for Personal Data Protection 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 rules set out in the Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended). All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1) and (2) of the Act of May 10, 2018 on the protection of personal data).

At the time when the event described by the Complainant took place, the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter also referred to as the Act, was in force. Above the act defined the rules of conduct in the processing of personal data and the rights of natural persons whose data is or may be processed in data files (Article 2 (1) of the Act). The provision of fundamental importance for the assessment of the legality of the processing of personal data was Art. 23 of the Act.

Pursuant to Art. 33 paragraph 1 uodo 1997, at the request of the data subject, the data controller was obliged, within 30 days, to inform about his / her rights and to provide, regarding his personal data, the information referred to in art. 32 sec. 1 point 1 - 5a of the Personal Data Protection Act, and in particular provide in an intelligible form: what personal data was contained in the

set, how the data was collected, for what purpose and scope the data were processed, to what extent and to whom the data was made available. The commented provision was related to Art. 32 uodo 1997, which provided that the data subject could request the data controller to provide him with certain information. In accordance with paragraph 1 of this provision, each person had the right to control the processing of data concerning him contained in data files, and in particular the right to: obtain exhaustive information whether such a set exists, and to determine the data controller, the address of his seat and full name, and if the data controller is a natural person - his place of residence and first and last name (point 1), obtain information about the purpose, scope and method of processing data contained in such a set (point 2), obtain information from when the data is processed in the set concerning it, and providing in an intelligible form the content of these data (point 3), obtaining information about the source from which the data concerning it originate, unless the data controller is obliged to maintain state, professional or professional secrecy in this respect (point 4 ), obtain information on how to share data, in particular information about recipients or categories of recipients, which These data are made available (point 5), to obtain information about the premises for taking the decision referred to in art. 26a paragraph. 2 (point 5a) of the UODO 1997.

There is no doubt that in the case at hand, the Complainant applied to the Company with a letter meeting the requirements of the application under Art. 33 uodo 1997. In the course of the proceedings, the collected evidence showed that the Company fulfilled the information obligation towards the Complainant only partially, ie the letter contained an indication of the scope and method of processing the Complainant's personal data, the Company as the administrator, and the recipients of the Complainant's personal data. The letter in question was limited to indicating the scope of the processed data, therefore it did not contain the content of the complainant's data, as requested by the complainant.

In the case at hand, with regard to the Complainant's complaint about the Company's failure to provide information, it should be noted at the outset that although the Complainant applied to the Company for compliance with the information obligation pursuant to the provisions of the Personal Data Protection Act, the public administration authority issues an administrative decision pursuant to the provisions of law in force in the moment of its release, i.e. after May 25, 2018, pursuant to the GDPR. At present, it should be stated that the fulfillment of the information obligation at the request of the data subject is reflected in Art. 15 sec. 1 GDPR. This provision provides that the data subject is entitled to obtain from the controller confirmation as to whether personal data concerning him or her are being processed, and if so, to obtain access to it. It is true that this provision does not explicitly indicate that the data subject may request that the content of the data be provided in a commonly

understood form (as under Art.32 (1) (3) of the Act on Personal Data Protection (UODO) 1997), however, this right can be derived from other provisions GDPR and its motives.

First of all, for the correct interpretation of the provisions relating to the above-mentioned obligation, Recital 63 of the Preamble to 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 the flow of such data and the repeal of Directive 95/46 / EC (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 as amended), hereinafter referred to as the GDPR, which states that "Every natural person should have the right to access the collected data concerning him and should be able to easily exercise this right at reasonable intervals in order to be aware of the processing and to be able to verify the lawfulness of the processing (...)", therefore also "whenever possible, the controller should be able to grant remote access to a secure system which will give the data subject direct access to his personal data."

The currently applicable Article 15 par. 1 GDPR aims to provide persons whose personal data are processed with access to information about the circumstances of their processing. Correct and reliable fulfillment of this obligation by the data controller is necessary to ensure that the data subject controls the correctness of the processing of personal data. Submitting the application, depending on its content, obliges the data controller to provide full information about the data processing process in the scope not narrower than provided for by the provision of Art. 15 GDPR. This provision specifies the minimum information that the data controller must provide to the applicant, but it is important that the information requested by the Complainant under this provision refers to his / her person and corresponds to the definition of personal data defined in the GDPR.

At the same time, it should be noted that pursuant to Art. 12 GDPR, the controller shall take appropriate measures to provide the data subject with all the information referred to in Art. 13 and 14, and conduct any communication with her pursuant to Art. 15-22 and 34 on processing. Information shall be provided in writing or otherwise, including, where appropriate, by electronic means. If the data subject so requests, the information may be provided orally, provided the identity of the data subject is confirmed by other means.

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. Correct and reliable fulfillment of this obligation by the data controller was necessary to ensure that the data subject can control the correctness of the processing of personal data. As pointed out by the Supreme Administrative Court in the judgment of 30 July 2009 (file reference number I

OSK 1049/08): "There should be no doubt that failure to comply with this [information obligation specified in Art. 33 of the Act] is a breach of the provisions of this Act [on the protection of personal data] within the meaning of Art. 18, entitling and obliging the Inspector General for Personal Data Protection to issue an administrative decision on ordering the restoration to legal status, i.e. in the situation specified in Art. 33 paragraph. 1 and 2 of this Act - in the matter of ordering the administrator of personal data to fulfill the information obligation referred to in this article ".

Therefore, since the Complainant filed an application in which he refers to the content of Art. 33 of the Act, the Company, as the data controller, was obliged to provide him with full information on the processed data within the limits set by art. 32 sec. 1 items 1-5a of the Act, and thus providing the Complain with the content of the processed data in a commonly understandable form, not the scope itself. Currently, the violation of the provisions on the protection of personal data by the Company still exists, therefore it is justified to issue an order under Art. 18 sec. 1 point 1 of the Act.

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 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.

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