

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 07

January

2020

## DECISION

ZKE.440.64.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (2018, item 2096, of 2019, item 1133), 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 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended, and of 2018, item 138), in connection with Art. 6 sec. 1 lit. c 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 EU Official Journal L 127 of 23/05/2018, p. 2), in connection with Art. 105 paragraph. 4, art. 105a paragraph. 4 and the Banking Law of August 29, 1997 (Journal of Laws of 2018, item 2187, as amended), following administrative proceedings regarding the complaint of Mr. A. Bank SA and B. S.A., 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. A. M. (hereinafter referred to as: the Complainant), represented by legal counsel J. H., about the processing of his personal data by A. Bank S.A. (hereinafter referred to as: the Bank), including their sharing and processing of the above-mentioned personal data by B. S.A. (hereinafter referred to as B.) and Z. The complainant requested that his personal data provided by the Bank to B. and Z.

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office (hereinafter: "the President of the Personal Data Protection Office") determined the following.

1. The Bank's explanations show that the Complainant's personal data was obtained by the Bank in connection with the conclusion of the cash loan agreement No. [...] of [...] April 2009 (hereinafter referred to as the agreement) between the

Complainant and B. Bank SA, whose legal successor in 2011, he became A. Bank SA

2. The Bank explained that the Complainant's personal data in the scope of the contract was transferred to B. on [...] May 2019 pursuant to Art. 105 paragraph. 4 of the Banking Law Act of August 29, 1997 (Journal of Laws of 2018, item 2187, as amended), hereinafter referred to as: the Banking Law, and the agreement between the parties.

3. The Bank's explanations also show that the Complainant was in default in the repayment of the liability under the loan agreement, which resulted in its termination by the Bank on [...] December 2011. The Bank sent to the Complainant the "Statement of termination", which contained information on the intention to process the Complainant's personal data pursuant to Art. 105a paragraph. 3 of the Banking Law. Therefore, the sanctioning processing of the Complainant's personal data without his consent began upon the expiry of the obligation, ie [...] September 2014 and was completed on [...] September 2019. The Bank does not currently report the Complainant's personal data to B.

4. B. explained that he was currently processing the complainant's personal data in order to use internal methods and other methods and models pursuant to Art. 105a paragraph. 4 and 5 in connection with joke. 105 paragraph. 4 of the Banking Law.

5. The Bank stated that it had not disclosed the personal data of Complainant Z. and that they had not been processed in A. In this factual state, 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 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 on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended), in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, of 2019, item 1133) 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 (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

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 August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure), hereinafter referred to as "the Act of 1997" and on the basis of Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed before the date of entry into force of the 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 "the public administration body assesses the actual state 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 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 the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071) M. Jaśkowska, A. Wróbel, Lex., EI / 2012). In the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07 The Supreme Administrative Court 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 on the date of issuing the decision on the matter and whether it is done in a lawful manner" .

At the time the event described by the applicants took place, the 1997 Act was in force. After May 25, 2018, the provisions of Regulation 2016/679 apply. The provision of fundamental importance for the assessment of the legality of the processing of personal data was Art. 23 sec. 1 of the 1997 Act (Article 6 (1) of Regulation 2016/679 respectively). Pursuant to the aforementioned provision, the processing of personal data is lawful when the data controller meets one of the conditions listed in this article, i.e. when:

the data subject has consented to it, unless it concerns the deletion of data concerning him (Article 6 (1) (a) of Regulation 2016/679, respectively),

it is necessary to exercise an entitlement or fulfill an obligation resulting from a legal provision (Article 6 (1) (c) of Regulation 2016/679, respectively),

it is necessary for the performance of the contract when the data subject is a party to it or when it is necessary to take action before concluding the contract at the request of the data subject (Article 6 (1) (b) of the Regulation 2016/679, respectively) ,

it is necessary to perform tasks specified by law for the public good (Article 6 (1) (e) of Regulation 2016/679, respectively),

it is necessary to fulfill legally justified purposes pursued by data controllers or data recipients, and the processing does not

violate the rights and freedoms of the data subject (Article 6 (1) (f) of the Regulation 2016/679, respectively).

It should be added that these conditions apply to all forms of data processing listed in art. 7 sec. 2 of the 1997 Act, including making them available. 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 containing detailed regulations regarding the processing of personal data of bank customers is primarily the Banking Law. The assessment of the legality of the processing of the Complainant's personal data by the Bank and also by B. must therefore be carried out in conjunction with the provisions of the Banking Law.

Referring to the lawfulness of the processing of the Complainant's personal data by the Bank and B., it should be noted that the Complainant's personal data was transferred to B. in accordance with art. 105 paragraph. 4 of the Banking Law. In the light of 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, to other institutions statutorily authorized to provide loans with information constituting banking secrecy to the extent that such information is necessary in connection with granting loans, cash loans, bank guarantees and sureties (point 2), to credit institutions of 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 (point 3), loan 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 secrets and information provided by loan institutions and entities referred to in art. 59 d 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 the credit risk analysis (point 4) ". However, according to Art. 105 a sec. 3 of the Banking Law - "banks, institutions and entities referred to in sec. 1, may process information constituting banking secrecy and information provided by loan institutions and entities referred to in art. 59 d of the Act of 12 May 2011 on consumer credit, regarding natural persons after the expiry of the obligation resulting from the contract concluded with the bank, other institution authorized by law to grant loans, a loan institution or an entity referred to in art. 59 d of the Act of 12 May 2011 on consumer credit, without the consent of the person to whom the information relates, when the person has not fulfilled the obligation or has been in delay of more than 60 days in the performance of the service under the contract concluded with

the bank, another institution legally authorized to granting loans, a loan institution or an entity referred to in art. 59 d of the Act of 12 May 2011 on consumer credit, and after these circumstances at least 30 days have elapsed since the person was informed by the bank, other institution authorized by law to grant loans, a loan institution or an entity referred to in art. 59 d of the Act of 12 May 2011 on consumer credit, on the intention to process this information without its consent ”.

As regards the Complainant's request to delete his personal data provided by the Bank to B., it should be stated that B. is entitled to process the Complainant's personal data until [...] September 2026 in order to use internal methods and other methods and models pursuant to Art. 6 sec. 1 lit. c of Regulation 2016/679, i.e. processing is necessary to fulfill the legal obligation incumbent on the administrator. This obligation results from Art. 105a paragraph. 4 and 5 in connection with Art. 105 paragraph. 4 of the Banking Law.

However, referring to the Complainant's request to delete his personal data from system A operated by Z., it should be noted that the Bank stated that it had not disclosed the Complainant's personal data to this entity.

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act. According to this provision, in the event of a breach of the provisions on the protection of personal data, 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 legal status, in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying, or failure to provide personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data.

In these administrative proceedings, the President of the Personal Data Protection Office did not find any irregularities in the processing of personal data, therefore it should be concluded that there was no reason for the President of the Personal Data Protection Office to issue a decision ordering the restoration of the legal status referred to in Art. 18 sec. 1 of the 1997 Act. Therefore, it is reasonable to issue a decision refusing to accept the application, therefore the President of the Office for Personal Data Protection ruled 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 (address: ul. Stawki 2, 00-193 Warsaw). The entry 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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