

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

September

2019

DECISION

ZSOŚS.440.82.2019

Based on Article. 105 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 7 sec. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended) and Art. 5 sec. 1 point 6 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), after conducting administrative proceedings regarding the complaint of Mr. D. B., residing in in W., for the disclosure of his personal data to an unauthorized person by the District Prosecutor's Office in W.,

I discontinue the proceedings

Justification

The Personal Data Protection Office (hereinafter "UODO") received a complaint [...] from Mr. D. B., residing in in W. (hereinafter the "Complainant"), concerning the disclosure of his personal data to an unauthorized person by the District Prosecutor's Office in W. (hereinafter the "Prosecutor's Office").

In response to the complaint, in a letter of [...] July 2019, the President of UODO called on the Complainant to remedy the formal deficiencies in the complaint by:

- 1) specification of the extent to which the Complainant's right to the protection of personal data has been violated by the entity indicated in the complaint, i.e. precise and complete specification of the Complainant's personal data was breached;
- 2) an indication of the actions to be taken which are the basis of the provisions of the Personal Data Protection Act, the Complainant expects from the President of the Personal Data Protection Office. The complainant, in his letter to the President of the Personal Data Protection Office of [...] July 2019, removed the formal deficiencies in the complaint, indicating the personal data whose protection had been violated and formulating a request for the complaint.

In view of the above, the President of UODO initiated administrative proceedings related to the complaint, and then, in a letter

of [...] July 2019, asked the District Prosecutor in W. for clarification on the matter. In response to the above-mentioned in the letter, the District Prosecutor in W. sent a letter to the President of UODO of [...] August 2019, in which he explained that "it is not possible to provide explanations and evidence in the scope requested in the letter, based on the legal basis, which is provision of Art. 5 sec. 1 point 6 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125) (...) ". Moreover, the District Prosecutor in W. indicated that the scope of the regulation of the above-mentioned the Act "(...) also covers the method of supervising the protection of personal data processed by competent authorities for the purposes referred to above, with the exception of personal data processed by the prosecutor's office and courts. In view of the above, the President of the Personal Data Protection Office (...) is not the authority competent to supervise the protection of personal data processed by the District Prosecutor's Office. " The District Prosecutor in W. also submitted that, pursuant to Art. 191a § 1 point 2) of the Act of 28 January 2016 Law on the Public Prosecutor's Office (Journal of Laws of 2019, item 740), supervision over the processing of personal data as part of the implementation of the tasks specified in Art. 2 of this Act, the administrators of which are universal organizational units of the prosecutor's office pursuant to Art. 13 § 6, performs within the scope of the activity of the regional public prosecutor's office - the regional public prosecutor.

In view of the above, due to the lack of competence of the President of the Personal Data Protection Office to resolve the matter on the merits, the proceedings initiated as a result of the complaint submitted by the Complainant had to be discontinued as redundant, pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (hereinafter "Kpa"). The legal doctrine indicates that the pointlessness of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means the lack of any element of the material-legal relationship, resulting in the fact that it is impossible to settle the matter by resolving its substance. The discontinuation of administrative proceedings is a formal ruling that ends the proceedings, without its substantive decision (judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, II OSK 1393/09). The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the case. .

The decision is final. Pursuant to Art. 9 sec. 2 of the Act of December 14, 2018 on the protection of personal data processed in

connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), this decision may be appealed against to 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.

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