

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 03

April

2019

DECISION

ZSPU.421.8.2018

Based on Article. 104 § 1 and 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 57 sec. 1 letter a) and art. 58 sec. 2 lit. d) in connection with joke. 5 sec. 1 lit. e), art. 13 sec. 1 lit. c) and e), art. 13 sec. 2 lit. a) and e) and art. 30 sec. 1 lit. d) 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 (general regulation on data protection) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), after administrative proceedings regarding the processing of personal data by the Mayor of W. , President of the Personal Data Protection Office

I. Orders the Mayor of W. to remove deficiencies in the processing of personal data by:

ensuring the storage of documents containing personal data, arising in connection with keeping the register of residents, for a period consistent with the period resulting from the regulation of the Prime Minister of 18 January 2011 on office instructions, uniform material lists of files and instructions on the organization and scope of operation company archives (Journal of Laws No. 14 item 67), by [...] September 2019.

indication in the information clause for persons who fulfill the registration obligation of the entity providing maintenance services of the IT system called A, with the use of which the register of residents is kept, ie A. Sp. z o.o.

II. In the remaining scope, the proceedings are discontinued.

Justification

Authorized by the President of the Personal Data Protection Office, the inspectors carried out at the Mayor W. control of the compliance of the processing of personal data with the provisions on the protection of personal data, i.e. with the Regulation of the European Parliament and of the Council (EU) 2016/679 of 27 April 2016 on the protection of persons natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General

Data Protection Regulation) (Journal of Laws UE L 119 of 04/05/2016, p. 1 and Dz. Urz. UE L 127 of 23/05/2018, p. 2) and the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended). The scope of the control covered the manner of keeping and securing the register of residents by the Mayor of W. In the course of the inspection, oral explanations were collected from employees of the Municipal Office in W., the IT system for processing personal data was inspected, and the premises where personal data processing takes place were inspected. The facts were described in detail in the inspection report, which was signed by the Mayor W.

On the basis of the evidence collected in this way, it was found that, in the process of processing personal data, the Mayor of W., as the data controller, breached the provisions on the protection of personal data. These shortcomings consisted of: Development of an information clause in the Town Hall in W. for persons fulfilling the registration obligation, which did not contain all the information specified in art. 13 of the General Data Protection Regulation, in particular information on all data recipients and did not indicate the date of data deletion. In addition, the clause did not indicate which of the above-mentioned purposes of data processing were carried out by the Mayor of W. and the consequences of not providing personal data were not mentioned.

Keeping documents on the implementation of tasks related to keeping the register of residents for a longer period than resulting from the Regulation of the Prime Minister of 18 January 2011 on office instructions, uniform material lists of files and instructions on the organization and scope of operation of company archives (Journal U. No. 14 item 67).

Failure to include in the register of processing activities information about parties and participants in administrative proceedings conducted in registration cases as recipients of data processed in connection with keeping the register of residents.

Therefore, on [...] January 2019, the President of the Office for Personal Data Protection initiated ex officio administrative proceedings to clarify the circumstances of this case (letter reference [...]).

In response to the notification of the initiation of administrative proceedings, the Mayor of W., by letter of [...] January 2019, no.

The information clause for persons performing the registration obligation has been supplemented with information about the recipients of personal data, i.e. parties and participants in administrative proceedings and entities servicing the IT systems used, without indicating specific entities with whom such contracts are concluded. In addition, the information clause indicates the planned date of data deletion, the consequences of not providing personal data and indicates which purposes of personal

data processing are carried out by the Mayor of W.

Documentation from 2001-2010 was transferred from the archives of the Department of Civil Affairs to the Archives of the Company Municipal Office in W. Due to the applicable procedures related to the need to obtain a permit for scrapping from the State Archives, it was indicated that the expected date of destruction of documents is the turn of the second and third quarter of 2019 r.

In the register of processing activities for the activities "Conducting administrative proceedings for registration / check-out / repealing the material and technical registration operation", the recipients of personal data of the party and participants of proceedings in cases for check-out / registration are included.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following:

Pursuant to Art. 13 sec. 1 lit. e) the general regulation on the protection of personal data, if the personal data of the data subject are collected from that person, the controller, when collecting the personal data, provides him with information about the recipients of the personal data or about the categories of recipients, if any. Moreover, pursuant to Art. 12 sec. 1 of the General Data Protection Regulation, the controller shall take appropriate measures to provide the data subject with all information about which in a concise, transparent, understandable and easily accessible form, clear and simple language - in particular when information is directed to a child - referred to in Art. 13 and 14, and conduct any communication with her pursuant to Art. 15-22 and 34 on processing.

The information clause for persons who fulfill the registration obligation, sent by the Mayor of W., in a letter of [...] January 2019, No. service for the IT systems used in the Municipal Office in W., however, the identification data of entities with whom such contracts are concluded, i.e. their names and addresses of the registered office, has not been indicated. During the inspection, it was found that on [...] January 2018, one IT system was implemented at the Town Hall in W. In order to provide maintenance services for system A, the Mayor of W. concluded on [...] January 2018, contract No. [...] with A. Sp. z o.o.

The principle of transparency resulting from the general regulation on the protection of personal data requires the data controller to indicate the names and addresses of the registered offices of data recipients in the content of the information clause. As indicated in the literature, "The rightness of adopting the principle of transparency does not seem to raise any objections. In fact, it is an expression of the concern that the European legislator attaches to strengthening the position of the

data subject by ensuring the proper exercise of his rights, including those of an informative nature. (...) Having an appropriate resource of information by data subjects is a necessary condition for exercising actual control over who, when, how and for what purpose obtains information about them, reduces the risk of abuse by administrators, and also allows for the real use of legal protection tools. The receipt by the data subject of a specific message containing all the necessary information is as important in this process as being able to understand it and assimilate its content. ' (J. Łuczak [in:] ed. E. Bielak-Jomaa, D. Lubasz GDPR. General Data Protection Regulation. Commentary, Warsaw 2018, Wolters Kluwer, p. 467).

Information on the entity to which the Mayor of W. entrusted the processing of personal data in connection with keeping the register of residents in IT system A, in terms of the name and address of the seat of this entity, should be provided to the data subject, in connection with the principle of transparent information.

In view of the above, it should be considered that the Mayor of W. did not include in the information clause for persons who fulfill the registration obligation, information about all recipients of personal data pursuant to art. 13 sec. 1 lit. e) general data protection regulation.

Pursuant to Art. 5 sec. 1 lit. e) of the General Data Protection Regulation, personal data must be kept in a form which permits identification of the data subject for no longer than is necessary for the purposes for which the data are processed; personal data may be stored for a longer period as long as they are processed solely for archiving purposes in the public interest, for scientific or historical research purposes or for statistical purposes pursuant to Art. 89 paragraph. 1, subject to the implementation of the appropriate technical and organizational measures required by this Regulation to protect the rights and freedoms of data subjects ("storage limitation").

In the Regulation of the Prime Minister of 18 January 2011 on office instructions, uniform material lists of files and instructions on the organization and scope of operation of company archives (Journal of Laws No. 14 item 67), a 10-year period of storage of documents concerning registration matters. Meanwhile, in the course of the inspection, it was found that the Mayor of W. processes personal data contained in documents regarding registration proceedings for a longer period than resulting from the above-mentioned Regulation of the Prime Minister.

In response to the notice of initiation of the procedure, the Mayor W., in a letter dated [...] January 2019, no. December 2018 and No. [...] of [...] January 2019 from the archives of the Civil Affairs Department to the Company Archives of the Municipal Office in W. Due to the applicable regulations requiring the State Archives to obtain a permit for missing documents, the

expected date of document destruction indicated by the Mayor of W. is the turn of the second and third quarter of 2019. Taking actions by the Mayor of W., aimed at obtaining a permit for missing documents, cannot, however, constitute grounds for considering that in the above-mentioned legal status was restored. The mayor of W. still stores documents containing personal data related to the implementation of the registration obligation for a longer period than is necessary for the purposes for which these data are processed, which constitutes a violation of art. 5 sec. 1 lit. e) general data protection regulation. However, taking into account the applicable regulations related to the lack of documents, the deadline proposed by the Mayor of W. should be taken into account for the removal of deficiencies in this respect identified in the course of the inspection. At the same time, on the basis of the explanations submitted by the Mayor of W. and other presented evidence, it should be concluded that in the course of the proceedings, other shortcomings in the processing of personal data, which are the subject of the proceedings, have been removed, i.e.:

The information clause for persons performing the registration obligation includes information about the parties and participants of administrative proceedings in cases of de-registration / registration who are recipients of data, the planned date of data deletion, the consequences of not providing personal data and the purposes of personal data processing carried out by the Mayor of W.

The register of processing activities includes the recipients of personal data of the parties and participants in proceedings for de-registration / registration.

Pursuant to Art. 105 § 1 of the Code of Administrative Procedure, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, respectively, in whole or in part. The premise for the discontinuation of the proceedings, pursuant to Art. 105 § 1 of the Code of Administrative Procedure, the proceeding is groundless "for any reason", i.e. for any reason that results in the lack of one of the elements of the material legal relationship with regard to its subjective or objective party (judgment of the Supreme Administrative Court of 21 January 1999, SA / Sz1029 / 97).

Due to the fact that the remaining shortcomings in the processing of personal data, which are the subject of the present administrative procedure, had been removed, the procedure had to be discontinued in this respect.

In view of the above, the President of the Personal Data Protection Office resolved as in the sentence.

The decision is final. Based on Article. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws

of 2018, item 1000) in connection with Art. 13 § 2, art. 53 § 1 and article. 54 § 1 of the Act of August 30, 2002, Law on Proceedings Before Administrative Courts (Journal of Laws of 2018, item 1302), the party has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, within the deadline 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Personal Data Protection Office. The entry fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs.

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