

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

May

2019

DECISION

ZSOŚS.440.112.2018

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), art. 12 point 2, art. 22 and art. 23 sec. 1 point 2 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 Art. 100 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. G. B., residing in in Ż., on the refusal to provide information by the Police Commander in Chief about the processing of personal data in the databases of the National Criminal Information Center,

I refuse to accept the application

Justification

On [...] October 2017, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. G. B., residing in W-Z cake. (hereinafter "the Complainant") concerning the refusal to provide information by the Police Commander in Chief (hereinafter "the Commander in Chief") about the processing of the Complainant's personal data in the databases of the National Criminal Information Center (hereinafter "KCIK"). It should be noted that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data, i.e. May 25, 2018, the Inspector General for Personal Data Protection became the President of the Personal Data Protection Office (hereinafter the "President of the Personal Data Protection Office"). According to Art. 100 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), proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry of this Act in life, are carried out on the basis of the existing provisions, i.e. the provisions of the Act of August 29, 1997 on the protection of personal data (Journal of Laws of 2016, item 922, as amended).

In the complaint, the Complainant indicated that the Commandant in Chief, without any legal basis, refused to provide the Complainant with information on the processing of his personal data in the KCIK databases. In the complaint, the complainant questioned the right of the Commander-in-Chief to refuse to provide the Complainant with information on the processing of his personal data in the KCIK databases and requested that the Commander-in-Chief be ordered to provide this information. In the complaint, the complainant accused the Commander-in-Chief of a violation of:

art. 7 and art. 51 sec. 3 of the Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws of 1997, No. 78, item 483, as amended),

art. 18 sec. 2 in connection with Art. 4 point 4 of the Act of 6 July 2001 on the processing of criminal information, hereinafter referred to as the "KCiK Act" (Journal of Laws of 2019, item 44 as amended; previous title of the act: the Act on the collection, processing and transfer of criminal information),

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), hereinafter referred to as "uodo", in connection with art. 18 sec. 2 of the KCiK Act,

art. 34 of the Personal Data Act in connection with Art. 18 sec. 2 of the KCiK Act.

In the course of the proceedings initiated as a result of the complaint, the President of the Personal Data Protection Office (UODO) carried out an inspection at the Police Headquarters, obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

The complainant, in a letter of [...] August 2017, submitted a request to the Commander-in-Chief for information on the processing of his personal data in the KCIK databases. In response to the above-mentioned letter, the Chief Commander in a letter of [...] September 2017 refused to grant the Complainant the above-mentioned information and informed the Complainant that the collection, processing and transmission of criminal information in accordance with the principles set out in the Act on KCIK, takes place without the knowledge of the persons to whom it relates, and that this information is protected under the provisions on the protection of classified information. The Chief Commandant also pointed out that "the Act on KCIK (...) is a *lex specialis* in relation to the norms specified in Art. 25, 32 and 33 of the Act on the Protection of Personal Data (...)", and therefore" (...) the Police Commander in Chief as the Head of the Center is not obliged to inform the person whose personal data may be collected and processed about the fact of processing such data as well as on the scope of processing or sharing personal data. ". The Chief Commandant also argued that he is not obliged to inform about the content of the information,

about the recipients of the data, about the deletion of the information and about the scope of the data deleted from the data set.

In connection with the complaint, an inspection of the Office for Personal Data Protection was also carried out, the scope of which covered the processing by the Commander in Chief of the Police of the complainant's personal data at KCIK. The analysis of the entirety of the evidence collected in the case, obtained in the course of the inspection, did not reveal any deficiencies in the processing of personal data within the scope covered by the inspection and the complaint. Moreover, as it was established in the course of the inspection, when refusing to reply to confirm or deny the fact of processing the complainant's personal data, the Police Commander in Chief referred primarily to Art. 2 clause 2 of the Act on KCIK, according to which the collection, processing and transmission of criminal information in accordance with the principles set out in the Act on KCIK takes place without the knowledge and consent of the persons concerned. A similar provision, i.e. Art. 20 paragraph 2a, was also introduced to the Act of 6 April 1990 on the Police (Journal of Laws of 2019, item 161 - hereinafter the "Police Act"). Pursuant to the wording of this provision, the Police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, about persons mentioned in this provision, also without their knowledge and consent. Based on Article. 20 paragraph 2a of the Police Act, the Police refuses to fulfill the information obligation towards persons applying for it regarding the processing of their personal data in the National Police Information System (KSIP).

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

The above-mentioned Act on the Protection of Personal Data creates the legal basis for the application of state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, assessing the status of the case and subsuming, determines whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in 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 - hereinafter referred to as the "Personal Data Protection Act") and depending on the findings in the matter - either issues an order or prohibition or refuses to accept the request, or discontinues the proceedings. The issuance of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing.

Pursuant to Art. 1 of the Act on the Protection of Personal Data, everyone has the right to the protection of their personal data, and the processing of such data, as referred to in Art. 7 point 2 of the above-mentioned of the act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing in mind the above, therefore, when applying the provisions of the Act on the protection of personal data, it is necessary to weigh the underlying goods each time. In this case, the content of Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, which states that the processing of data is permissible when it is necessary to exercise the right or fulfill the obligation resulting from the law.

The legal basis for the processing of personal data by the Commander-in-Chief of KCIK is primarily the provisions of the above-mentioned Act on KCIK. Pursuant to Art. 2 clause 1 of the Act, "on the principles set out in the Act, criminal information is processed in order to detect and prosecute perpetrators of crimes and to prevent and combat crime". It follows from the wording of the above-mentioned provision that the processing of criminal information is obligatory, and the obligation in this respect is carried out, pursuant to Art. 5 sec. 1 and art. 6 of the Act on KCIK, Chief Commander. In view of the above, taking into account also the wording of Art. 2 clause 2 of the KCIK Act, according to which the collection, processing and transmission of criminal information in accordance with the principles set out in the KCIK Act takes place without the knowledge and consent of the persons concerned, the argumentation of the Commander in Chief, constituting the basis for refusing to provide information to the Complainant, should be followed. The correctness of the negative position of the Commander-in-Chief regarding the fulfillment of the information obligation in the scope indicated in Art. 33 paragraph 1 of the Act on the Protection of Personal Data is confirmed by the judgment of the Provincial Administrative Court (file reference number: II SA / Wa 1885/10). In the justification of the said judgment, the Provincial Administrative Court ruled that "Referring to ordering the Police Commander in Chief to fulfill the information obligation towards M. D. in the scope indicated in Art. 33 paragraph 1 of the Act on the Protection of Personal Data, it should also be indicated that the provision of Art. 20 paragraph 2a of the Police Act is a *lex specialis* in relation to the above-mentioned provision of the Act on the Protection of Personal Data. The police may process personal data, including persons suspected of committing crimes not only without their consent, but also without their "knowledge". This statutory limitation of the civil right to obtain knowledge about the information held about it by the Police results from the necessity to limit the access to information that may even indirectly reveal the operational methods of the Police, i.e. sources of information about crimes, connections between criminal environments, etc. This, in turn, justifies data

processing. personal persons referred to in art. 20 paragraph 2a of the Police Act, without their knowledge, because the data, which should be emphasized, were obtained legally, in accordance with the law, under the supervision of common courts. ”.

The Voivodship Administrative Court upheld the above position in another judgment (file reference number II SA / Wa 1648/13), and then was shared by the Supreme Administrative Court, examining the cassation appeal against the cited judgment (file reference number: I OSK 1100/11).

Therefore, taking into account the analogy of the provisions specified in the Act on the NCIC (Article 2 (2)) and the Act on the Police (Article 20 (2a)), one should adhere to the position presented by the Police Commander in Chief both during the inspection and in the response communicated to the Complainant in a letter of [...] September 2017, in which the fulfillment of the information obligation specified in Art. 33 paragraph. 1 of the Act on the Protection of Personal Data with regard to the processing of personal data at KCIK.

In the light of the above findings, one cannot agree with the complainant's allegation that the Commander-in-Chief violated the provisions of law in the case at hand and it should be stated that the Commander-in-Chief has a legal basis for refusing to provide the Complainant with information regarding the processing of his personal data at KCIK.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

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), the party 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 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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