

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

October

2018

DECISION

ZSOŚS.440.76.2018

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) and Art. 12 point 2, art. 22 and art. 23 sec. 1 point 2 and art. 26 sec. 1 point 4, as well as art. 27 sec. 2 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 joke. 160 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) and in connection with art. 20 of the Act of April 6, 1990 on the Police (Journal of Laws of 2017, item 2067, as amended), after conducting administrative proceedings in the case initiated by a complaint of Mr. K. J., residing in in P., for reconsideration of the case regarding failure to fulfill the information obligation arising from Art. 33 of the Act on the Protection of Personal Data by the Police Commander in Chief with headquarters in Warsaw at ul. Puławska 148/150, ended with a decision of March 8, 2018, ([...]) refusing to accept the request, President of the Office for Personal Data Protection, upholds the contested decision

Justification

Mr K. J. complained to the Office of the Inspector General for Personal Data Protection, hereinafter referred to as GIODO, from Mr. K. J. in P., hereinafter referred to as the "Complainant", regarding the failure to fulfill the information obligation under Art. 33 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 u.o.d.o., by the Police Commander in Chief based in Warsaw at ul. Puławska 148/150, hereinafter referred to as the "Commandant".

In the said complaint, the complainant asked for the following quotation: "causing the restoration to legal status by ordering the Police Headquarters to reply to [...] the request of [...] March 2017, issued pursuant to Art. 32 sec. 1 and 2 (u.o.d.o.)".

The applicant submitted that the abovementioned the application requested information on the content and scope of personal data processed by the Police in police ICT systems about his person, as well as for the purpose of processing the data in

question, by determining whether these are the purposes expressed in art. 20 paragraph 15 or paragraph 16a of the Act of April 6, 1990 on the Police (Journal of Laws of 2017, item 2067, as amended), hereinafter referred to as The complainant emphasized that he was not any of the persons referred to in Art. 20 paragraph 2a of the Act on Public Procurement Law, therefore the police refusal to disclose the requested information is incomprehensible to him.

In the course of the administrative procedure conducted in this case, the Inspector General for Personal Data Protection established the following.

The applicant on [...] March 2017 sent a request to the Warsaw Police Headquarters for information, in an easily understandable form, on the content and scope of personal data concerning him, processed by the Police in police information systems.

In a letter of [...] March 2017, the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the General Police Headquarters, acting under the authority of the Police Commander in Chief, refused to disclose the information requested by the complainant. Art. 20 paragraph 2a of the Act, which, in the opinion of the author of the letter of [...] March 2017, is a special norm in relation to Art. 32 and 33 u.o.d.o. In the letter of [...] March 2017, it was also stated that the quotation: "pursuant to Art. 51 sec. 5 of the Constitution of the Republic of Poland (Journal of Laws No. 78, item 483, as amended), the rules and procedure for gathering and sharing information are specified in the Act. In the case of information, including personal data processed in the National Police Information System, the act specifying the rules and procedure for collecting and sharing information is the Act on the Police, in particular [...] art. 20 paragraph 2a ".

Based on the facts thus established, the Inspector General for Personal Data Protection issued a decision of March 8, 2018 (DOLiS / -440-1043 / 17), in which he refused to accept the request.

On [...] April 2018, within the statutory deadline, the complainant's request for reconsideration of the case was received by the GIODO Bureau.

In the above-mentioned application, the objection of "misinterpretation of Art. 20 paragraph 1 and 2a of the Act of April 6, 1990 on the Police (Journal of Laws of 2017, item 2067, as amended) in connection with joke. 2 and 25 of the Act of 6 July 2001 on the collection, processing and transmission of criminal information (Journal of Laws of 2018, item 424, as amended). "

It should be noted here that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000), on May 25, 2018, the Office of the Inspector General for Personal Data Protection

became the Office 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 on the basis of 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 principles set out in the Code of Administrative Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

After re-analyzing the evidence collected in the case, the President of the Office for Personal Data Protection upholds his position expressed in the challenged decision. The request for reconsideration did not contain any circumstances that could constitute the basis for its change.

It should be pointed out again that the protection of personal data is, in principle, guaranteed in Art. 51 of the Act of April 2, 1997, the Constitution of the Republic of Poland (Journal of Laws No. 78, item 483, as amended), however, the scope of the constitutional regulation does not extend to all forms of personal data processing. According to paragraph 1 and sec. 3 of the cited provision of the Constitution of the Republic of Poland, no one may be obliged, other than under the Act, to disclose information about him (section 1) and everyone has the right to access official documents and data files relating to him; limitation of this right may be specified in the act (section 3), however, the rules and procedure for collecting and sharing information are specified in the act (section 5). By the act indicated in Art. 51 sec. 5 of the Constitution of the Republic of Poland is the Act on the Protection of Personal Data, while according to the principles of the protection of personal data resulting from the provisions of the Act, the data controller has a number of obligations.

Bearing in mind the above, it should be stated again that the provisions of the law governing the processing of personal data by the Police are the provisions of the Act of April 6, 1990 on the Police (Journal of Laws of 2017, item 2067, as amended).

These provisions regulate the processing of personal data, the deletion of which is requested by the Complainant and in connection with Art. 27 sec. 2 point 2 of the Act constitute an independent condition for the processing of this data.

In the field of processing various types of information, including personal data, the function of the Police is special, as it collects information that is subject to a special regime and protection. This is reflected in Art. 20 paragraph 1 and sec. 2a of the Police Act, on the basis of which the Police, subject to the limitations resulting from art. 19, may obtain information, including classified information, collect, check and process it (section 1). The police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, about the following persons, also without their knowledge

and consent: about persons suspected of committing crimes prosecuted under public indictment, by the Act as crimes prosecuted by public indictment, about persons with undetermined identity or trying to conceal their identity, about persons posing a threat, referred to in the Act of 22 November 2013 on proceedings against persons with mental disorders posing a threat to life, health or sexual freedom of other persons, persons wanted, missing persons and persons against whom protection and assistance measures have been applied, provided for in the Act of 28 November 2014 on the protection and assistance for the victim and witness (Journal of Laws of 2015, item 21) (Article 20 (2a) of the Police Act). In the light of Art. 20 paragraph 2b of the Police Act, the information referred to in sec. 1, 2a, 2aa-2ac, apply to the persons referred to in paragraph 1. 2a and 2ac and may include: personal data referred to in art. 27 sec. 1 of the Act on the Protection of Personal Data, provided that the data on the genetic code includes information only about the non-coding part of DNA, fingerprints, photos, sketches and descriptions of the image, features and special signs, pseudonyms, information about: place of residence or stay, education, profession, place and position as well as material situation and the condition of property, documents and objects they use, the way of acting of the perpetrator, his environment and contacts, the manner of behavior of the perpetrators towards the aggrieved parties. The information referred to in para. 2a, shall not be charged in the case when they are not useful for detection, evidence or identification in the conducted proceedings (Article 20 (2c) of the Police Act).

Detailed rules for the processing of personal data of persons mentioned in art. 20 paragraph 2a of the Police Act is specified in the regulation of the Minister of the Interior and Administration of August 24, 2018 on the processing of information by the Police (Journal of Laws of 2018, item 1636), hereinafter referred to as the "Regulation". Pursuant to § 10 of the regulation in question, the Police operates the National Police Information System (KSIP), which is a set of data sets in which information is collected, checked, processed and used, including personal data referred to in art. 20 paragraph 2a points 1-6, sec. 2ac and paragraph. 2b of the Police Act. The KSIP may also process information, including personal data, to which the Police is entitled to collect, obtain and process on the basis of separate acts, if this contributes to the coordination of information and more effective organization and implementation of the statutory tasks of the Police in the field of detecting and prosecuting perpetrators of crimes. and preventing and combating crime, as well as protecting human life and health (§10 (2) of the Regulation). It should be emphasized that the criterion of the necessity to process personal data in the KSIP must always be related to the statutory tasks of the Police, the implementation of which is to be achieved by the provisions of Art. 20 paragraph 1, sec. 2a and 2b in connection with Art. 20 paragraph 17 of the Police Act.

In addition, the Police maintains a criminal information database of the National Criminal Information Center (KCIK), the legal basis of which is Art. 5 in connection with Art. 26 of the Act of 6 July 2001 on the collection, processing and transfer of criminal information (Journal of Laws of 2018, item 424), hereinafter referred to as u.p.i.k. The National Criminal Information Center was established within the structure of the General Police Headquarters in order to collect, process and transmit criminal information; keeping databases and determining the organizational and technical conditions for the maintenance of such databases; developing analyzes of criminal information; ensuring the security of collected and processed data on the terms set out in u.o.d.o. and in the Act of 5 August 2010 on the protection of classified information (Journal of Laws of 2016, item 1167, as amended).

KCIK may collect, process and transfer criminal information only for the purpose of preventing and combating crime (Article 2 (1) of the Act on Civil Procedure). In addition, these processes take place on the principles set out in the Act on Public Procurement Law. and without the knowledge of the persons to whom the information relates (Article 2 (2) of the AJP).

The basic act regulating the matter of personal data protection is u.o.d.o., according to which everyone has the right to the protection of personal data concerning him. Article 32 u.o.d.o. guarantees data subjects the right to control the processed personal data contained in personal data files and specifies how this right can be exercised. Additionally, pursuant to Art. 33 u.o.d.o. at the request of the data subject, the data controller is obliged, within 30 days, to inform him about his rights and provide, regarding his personal data, the information referred to in art. 32 sec. 1 points I-5a. Pursuant to Art. 33 paragraph 2 u.o.d.o., at the request of the data subject, the information referred to in para. 1 shall be granted in writing.

Pursuant to Art. 34 u.o.d.o., the personal data administrator refuses the data subject to provide the information referred to in art. 32 sec. 1 points I-5a, if it would result in: disclosure of messages containing classified information (point 1), a threat to the state's defense or security, human life and health, or public safety and order (point 2), a threat to the basic economic or financial interest of the state (point 3) or a significant infringement of the personal rights of data subjects or other persons (point 4). At the same time, it should be stated that in connection with the wording of Art. 34 u.o.d.o. data subjects - due to the above-mentioned specific nature of the provision being analyzed - should take into account the fact that the controller has the right to refuse to fulfill the information obligation towards them, as long as it is obliged to protect other important interests. Refusal to comply with the data subject of the above-mentioned obligation should be an exception.

At the same time, it should be noted that pursuant to Art. 51 of the Polish Constitution and Art. 1 clause 2, art. 23 sec. 1 point 2

and art. 27 sec. 2 point 2 u.o.d.o., other legal acts, protecting the public good, may contain exceptions to the general principle of personal data protection.

Regarding the processing of the Complainant's personal data by the Police Commander in Chief, it should be noted that the acts regulating the issue of personal data processing by the Police include, next to u.o.d.o., the provisions of the Act on Law and the provisions of implementing acts issued on their basis.

Taking into account the considerations carried out in the course of the proceedings in this case by GIODO, it should be concluded that the Act on the Police, and in particular Art. 20 paragraph 2a and art. 2 clause 2 u.p.i.k. contain derogations from the information obligation under Art. 32 and 33 u.o.d.o., which is in accordance with the content of Art. 51 of the Polish Constitution and Art. 1 clause 2 and art. 23 sec. 1 point 2 and art. 34 u.o.d.o.

At this point, attention should also be paid to the tasks entrusted to the Police, including the protection of human life and health, property, against unlawful attacks violating these goods, protection of public safety and order, initiating and organizing preventive actions aimed at preventing committing crimes and petty offenses as well as detecting crimes and petty offenses and prosecuting their perpetrators. In order to perform the above tasks, it is important to be able to collect and process personal data without the knowledge and consent of the data subject. Additionally, art. 2 clause 1 u.p.i.k. stresses that this information may only be processed for the purposes of combating and preventing crime. Therefore, one should agree with the Provincial Administrative Court in Warsaw, which in its judgment of 10 January 2014 (file reference number II SA / Wa 1648/13) stated that the lack of these attributes would deprive the Police of "(...) one of the instruments , enabling it to really care for safety and public order. This, in turn, would make it difficult, and sometimes even prevent the Polish State from properly fulfilling the obligations described in the Constitution of the Republic of Poland towards its citizens (...). Therefore, it would result in subordinating the higher value, which is the good of all citizens, to the lower value, which is the right of the individual to protect her personal data ".

Therefore, it should be stated that Art. 20 paragraph 2a of the Act and art. 2 clause 2 u.p.i.k. are norms specific to Art. 33 u.o.d.o. One should agree with the statement of the Provincial Administrative Court in Warsaw expressed in the above-cited judgment that: "since (...) the legislator allowed the Police to collect and process personal data even without the knowledge of the data subjects, it would be irrational to submit, that at the same time it obliges the Police to inform these people about the circumstances described in Art. 32 sec. 1 points 1-5a of the Act on the Protection of Personal Data. There is a mutual

contradiction between the above-mentioned regulations ”.

Also in the judgment of the Provincial Administrative Court in Warsaw of 28 January 2014 (file ref. II SA / Wa 1366/13) it was stated that: when the personal data protection authority finds a breach of the standards for the processing of personal data. " However, there are no grounds for this in the present case.

Therefore, summing up the above fragment of the argument, it should be stated that there are no grounds - in accordance with the Complainant's request - to revoke the first-instance decision and issue an administrative decision ordering the restoration to legal status by ordering the Police Commander in Chief to fulfill the information obligation under Art. 33 u.o.d.o. towards the applicant. This is because the condition for issuing the decision referred to in Art. 18 sec. 1, is a finding of a breach of the provisions on the protection of personal data at the date of the decision. In the context of the above, it should be noted that the Complainant's request for disclosure of personal data concerning him by fulfilling the information obligation under Art. 33 paragraph 1 u.o.d.o. in terms of data corresponding to the information indicated in art. 32 sec. 1 point _1 - 5 AEF goes beyond the rights referred to in Art. 51 sec. 3 of the Polish Constitution, i.e. the right to access official documents and data files. In the present case, pursuant to Art. 51 sec. 5 of the Constitution of the Republic of Poland, the principles and procedure for sharing information collected and processed by the Police are specified in Art. 20 of the Police Act, which provides for the processing of information, including personal data, without the knowledge and consent of the data subject (section 2a), and in certain cases also secretly (section 1). In addition, the National Police Information System and police data files are not official documents, therefore the KSIP is not a publicly available data set, and the disclosure of information from the police data file to other authorities, services or institutions by the Police Commander in Chief, as the data controller, is only possible. in the event that such an obligation results from other specific provisions that also define the scope and purpose of the disclosure. In the case under consideration, while implementing the provisions of the Act, the fulfillment of the information obligation under Art. 33 u.o.d.o. the Complainant cannot take place due to the reasons indicated in Art. 20 of the Police Act, the purposes of information processing, i.e. the implementation of statutory tasks of the Police and the prerequisites for discretionary processing of this information, i.e. without knowledge and consent.

After re-analyzing the evidence collected in the case, the President of the Office for Personal Data Protection upholds the position taken in the administrative decision of March 8, 2018.

This decision is final. Based on Article. 21 sec. 2 and art. 22 of the Act on the Protection of Personal Data in connection with

Art. 13 § 2, art. 53 § 1 and 54 § 1 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2018, item 1302, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw against this decision within 30 days from the date of delivery of this decision via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw).

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