

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

September

2019

DECISION

ZSOŚS.440.102.2019

Based on Article. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) in connection with Art. 3 point 1 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) following administrative proceedings regarding the complaint of Ms F. O. . [...]) irregularities in the processing of her personal data by the District Prosecutor's Office in S.

I discontinue the proceedings

Justification

On [...] June 2019, the Office for Personal Data Protection received a complaint from Ms FO (hereinafter referred to as: "the complainant") about irregularities in the processing of her personal data by the District Prosecutor's Office in S. for an unauthorized person, their personal data contained in the files of the preparatory proceedings with reference number [...] by the District Prosecutor's Office in S. (ul. [...]).

In her complaint, the complainant alleged that her personal data in the form of an address, telephone number, ID card, PESEL number, as well as scanned copies of her signatures contained in the files of the preparatory proceedings had been smeared with a black marker in a way that made them readable, which made it possible for an unauthorized person to disclose these files to an unauthorized person. its familiarization with the content of these data. The complainant indicated that due to the situation, she had received from a person who had unlawfully obtained access to her personal data, a pre-court summons by means of which the person tried to extort money from her and had to replace her identity card with a new one. Consequently, the applicant requested that the District Prosecutor's Office in S. be punished, ordered the Prosecutor's Office to limit the processing of her personal data to the minimum necessary and to be informed about the activities undertaken in this regard.

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office obtained

explanations regarding the circumstances of the case, read the evidence and made the following findings.

By letters of [...] August 2019, the President of the Personal Data Protection Office informed the applicant and the District Prosecutor of the District Prosecutor's Office in S. about the initiation of the proceedings and asked the District Prosecutor to comment on the content of the complaint and submit written explanations. On [...] August 2019, the Office for Personal Data Protection received a letter from the Deputy District Prosecutor's Office ([...]), in which he explained that the subject of the proceedings in the case with the file number [...] was to determine whether a prohibited act specified in Art. 190a § 1 of the CC consisting in persistent harassment, among others The applicant by arousing a feeling of danger in the victim. The applicant indicated Ms T. F. as the perpetrator of the offense. At the request of Ms T. F., the prosecutor, by an order of [...] January 2019, consented to making her available to her and making a photocopy of two reports of the applicant's interrogation contained in the files of the proceedings in question. Moreover, the Deputy District Prosecutor's Office indicated that the above-mentioned protocols, prior to their disclosure to Ms T. F., had been, pursuant to Art. 148 § 2b of the CCP, subjected to anonymization, which was carried out inaccurately by the Police Headquarters I in S. who conducted the investigation, because when enlarging the pages it was possible to partially read the secured data. He also emphasized that, in order to avoid similar situations in the future, the Prosecutor's Office had taken steps to send letters to the Police units subordinate to the Prosecutor's Office describing the situation and ordering the files to be anonymised in a precise manner, making it impossible to read personal data.

The President of the Office for Personal Data Protection informed the applicant and the District Prosecutor in letters of [...] September 2019 about conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility to comment on the collected evidence and materials, and submitted requests in accordance with the content of art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings.

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

In the present case, it should be stated that the request for a complaint is not within the scope of activities and competences of the President of the Personal Data Protection Office. According to the content of Art. 3 point 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (hereinafter: "the Act of December 14, 2018"), the provisions of this legal act do not apply to the protection of personal data contained in case files or

activities or recording devices, including those created and processed with the use of IT techniques, conducted on the basis of, inter alia, the Act of June 6, 1997 - Code of Criminal Procedure (Journal of Laws of 2018, item 1987, as amended). This means that the personal data contained in the above-mentioned data sets, processed in the course of, inter alia, criminal proceedings, the Act will not apply. These data are protected on the basis of the provisions regulating the given procedure. Undoubtedly, the issue of disclosing files is a special dimension of data operations, which should be understood as access to personal data contained in the files of the case through the possibility of viewing the evidence, obtaining copies and copies of documents collected in the files of the proceedings. However, in view of the regulation of Art. 3 point 1 of the above-mentioned Act of December 14, 2018, the President of the Personal Data Protection Office may not interfere in the activities of disclosing documents collected in the files of proceedings, which were regulated, inter alia, in the provisions of the Act of 6 June 1997 - Code of Criminal Procedure. Therefore, even if the method of anonymising the documents containing the complainant's personal data and the disclosure of the files of the proceedings raised doubts, it should be emphasized that the President of the Office for Personal Data Protection does not have the competence to undertake activities related to proceedings conducted by other authorities on the basis of legal acts specified in Art. 3 point 1 of the Act of December 14, 2018.

In this factual and legal state, the President of the Personal Data Protection Office decided as at the beginning.

The decision is final. Based on Article. 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), in connection with art. 15 of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court, within 30 days from the date of its delivery side. The complaint is lodged through the President of the Personal Data Protection Office (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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