

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 19

March

2019

## DECISION

ZSOŚS.440.61.2018

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. 27 sec. 1 and 2 point 2. Art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 20 of the Act of April 6, 1990 on the Police (Journal of Laws of 2017, item 2067, 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. R. L., residing in in B., for the processing of his personal data in the National Police Information System (KSIP) by the Police Commander in Chief,

I refuse to accept the application

### Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. R. L., residing in in B. (hereinafter: "the Complainant"), for the processing of his personal data in the National Police Information System (hereinafter: "KSIP") by the Police Commander in Chief (Warsaw, ul. Puławska 148/150), (hereinafter: " KGP ").

In the complaint, the complainant indicated that KGP processed his personal data in the KSIP system. The applicant also requested a decision ordering KGP to delete his personal data stored in the KSIP system.

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.

The complainant's personal data was processed at the National Police Information Register in connection with the prosecution conducted by the Public Prosecutor's Office. By application of [...] September 2011, the complainant asked for the removal of personal data from the KSIP due to the discontinuation of the proceedings. The above request was granted and the

Complainant's personal data was deleted. The applicant on [...] December 2017 committed a road traffic offense. On the terms set out in Art. 20 paragraph 1c of the Act of 6 April 1990 on the Police (Journal of Laws of 2019, item 161, as amended), in connection with the presentation of the above-mentioned charges, the competent Police authority made the so-called procedural registration, i.e. entered the Complainant's personal data into the data set of the KSIP. In a letter of [...] September 2017, the complainant asked the Police Commander in Chief for information as to whether his personal data was processed at the National Police Headquarters. Then, in a letter of [...] September 2017, the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the KGP replied to the above-mentioned the complainant's request, informing that, as stated in Art. 20 paragraph 2a, section 2ac and paragraph. 2b of the Police Act, the Police may download, obtain, collect, process and use, in order to carry out statutory tasks, information, including personal data, about persons suspected of committing crimes prosecuted by public indictment, minors or newcomers prohibited by the Act as prosecuted crimes on public indictment, persons with undetermined identity or trying to conceal their identity, persons posing a threat referred to in the Act of 22 November 2013 on proceedings against persons with mental disorders, posing a threat to the life, health or sexual freedom of other persons, persons wanted persons, missing persons, 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) and on persons, referred to in Art. 10 sec. 1 of the Act of 10 June 2016 on anti-terrorist activities, also without the knowledge and consent of these people. The letter explained that the information may include: personal data referred to in art. 27 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data. Additionally, the said letter explained to the Complainant that the provision of Art. 20 paragraph 2a in line of the Police Act is a *lex specialis* in relation to the norms specified in Art. 51 of the Polish Constitution and Art. 25, 32 and 33 of the Act on the Protection of Personal Data, which seems to be understandable and reasonable in all respects, in view of the statutory tasks assigned to the Police (including preventing and combating crime). Therefore, the Police is not obliged to inform the person whose personal data is being processed about the processing of such data, as well as about the scope of processing or sharing personal data. Considering the above, KGP refused the Complainant to grant the request. On [...] October 2017, a letter was received in which Mr. R. L. again asked the Police Intelligence and Criminal Information Office of the Police Headquarters to disclose personal data processed in the KSIP system. In response to the letter from Mr. RL, the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the National Police Headquarters

informed the Complainant that the factual and legal status had not changed and that he had maintained the position provided in the letter [...] of [...] September 2017. The Head of the Information Service Department of the Criminal Service Bureau of the Police Headquarters, authorized by the Police Headquarters, explained that the complainant did not again (after [...] November 2017) request the deletion of data from the National Police Headquarters. Authorized by the Police Headquarters, the Head of the Information Service Department of the Criminal Service Bureau of the General Police Headquarters, explained that according to the norms specified in Art. 20 paragraph 17 - The police are obliged to verify the data after the end of the case under which the data was entered into the file (here: KSIP), and also at least every 10 years from the date of obtaining or downloading the information, deleting redundant data. Above The head stated that the verifications required by the act were made in particular in terms of the premises under Art. 51 sec. 4 of the Polish Constitution and in terms of legality, including the premises of Art. 20 paragraph 17 b and 18 of the Police Act. When carrying out the above data verifications (assessments in terms of their usefulness), the Police did not have any information indicating the existence of the premises under Art. 20 paragraph 17b and 18 of the Police Act. Moreover, the Head of the Information Service Department of the Criminal Service Office of the Police Headquarters explained that the 10-year period of compulsory verification of the collected data has not yet expired, therefore, in the opinion of KGP, there are no statutory grounds for removing the complainant's data from the KSIP. The type of crimes committed by the applicant is also important (apart from the failure to meet the above-mentioned criterion of time).

In addition, it indicated that the legal basis for the processing of personal data in connection with offenses committed in road traffic was Art. 130 of the Act of June 20, 1997, Road Traffic Law (Journal of Laws of 2018, item 1990, as amended), Regulation of the Minister of the Interior and Administration of April 25, 2012 on dealing with drivers who violate road traffic regulations (Journal of Laws, item 488), and art. 16 sec. 1 of the Act of May 22, 2018 amending the Act - Road Traffic Law and certain other acts (Journal of Laws, item 957).

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 of August 29, 1997 provides legal grounds for applying 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 above of the Act on the Protection of Personal Data, depending on the findings in the case - either it 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 aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, in the sense referred to in Art. 7 point 2 of this 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 the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time.

In the course of the proceedings, the President of the Personal Data Protection Office established. The complainant committed a traffic offense [...] in December 2017. In the present 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 of persons who have breached the provisions of the Road Traffic Act is Art. 130 of the Road Traffic Act of June 20, 1997 (Journal of Laws of 2018, item 1990, as amended) in connection with Art. 16 (1) of the Act of 22 May 2018 amending the Act - Road Traffic Law and certain other acts (Journal of Laws item 957), the police keep records of drivers who violate road traffic regulations. A specific infringement is assigned an appropriate number of points on a scale from 0 to 10 and entered into the register. The violations of the road traffic regulations, which were not assigned a point value, are also entered. Points are removed after 1 year from the date of the violation, unless the driver has committed violations before the expiry of this period, for which the assigned number of points would exceed 24 points on the basis of valid decisions. Additionally, in accordance with the Ordinance of the Minister of the Interior and Administration of April 25, 2012 on dealing with drivers who violate road traffic regulations (Journal of Laws, item 488), § 1 sec. 1. A driver who, while driving a motor vehicle or moped, has committed an infringement of road traffic regulations, hereinafter referred to as "the infringement", is entered in the records. Pursuant to § 4 sec. 1 of the regulation, a final entry in the records shall be made if the infringement has been established with a final and binding decision: a court judgment, a court decision on conditional discontinuation of proceedings, a penalty notice or a decision of the adjudicating

body in a case of infringement in disciplinary proceedings. Additionally, according to § 4 sec. 2 of the Regulation, prior to issuing the decision referred to in para. 1, a temporary entry shall be entered into the records immediately after disclosure of the infringement. The provisional entry contains information on the number of points that will be finally assigned in the event that the violation is confirmed with this decision. On the other hand, the rules for deleting entries are set out in § 5 para. 1 of the regulation, stating that the authority keeping the records removes from the records the temporary entry referred to in § 4 sec. 2, if in the infringement procedure conducted by the competent authority, Art. 41 of the Act of 20 May 1971 - Code of Petty Offenses (Journal of Laws of 2010, No. 46, item 275, as amended), the person to whom the entry relates was acquitted of the charge of infringement by a final judgment, it was found, that: a) the act was not committed or there is no data sufficient to justify the suspicion of its commission, b) the act does not contain the features of a prohibited act, c) the criminal record has been statute-barred, d) the person subject to the entry has died. The authority keeping the records removes the final entry from the records if the punishment (conviction) has been obliterated or the person entered in the records has died. The authority issuing the decision on the refusal to initiate or to discontinue the proceedings shall notify the organizational unit of the Police, referred to in § 4 sec. 8. Art. 46 sec. 1 of the Code of Petty Offenses, that the punishment is considered void after 2 years from the execution, donation or limitation of the execution of the penalty. In the above-mentioned facts, the period referred to in Art. 46 of the Code of Petty Offenses has not expired, it means. that the prerequisite for obliterating the penalty, and thus deleting the complainant's personal data, was not met.

Bearing in mind the above, it should be stated that the manner of the Police's conduct in the discussed scope does not raise any doubts. The complainant's personal data is processed in accordance with the law.

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

The party has the right to appeal against the decision 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 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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