

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

May

2019

## DECISION

ZSOŚS.440.104.2018

Based on Article. 105 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and 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. 160 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws, item 1000, as amended) after conducting administrative proceedings regarding a complaint from Mr. RS staying in the Penitentiary Institution in S., to disclose his personal data on websites by Naczelny Sąd Administracyjny, T. Sp. z o.o. and by W. S.A.

I discontinue the proceedings

### Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. RS, detained in the Prison in S. (hereinafter referred to as the "Complainant") about the disclosure of his personal data regarding his stay in the prison, information about his income and debt and family situation, in connection with the publication of the judgment of the Provincial Administrative Court in Lublin [...] and the decision of the Provincial Administrative Court in Lublin, ref. no. [...] by the Supreme Administrative Court on the website of [...], T. Sp. z o.o. on the website [...] and by W. S.A. on the website [...] The complainant requested that his personal data be deleted.

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, item 1000, as amended), i.e. on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. Pursuant to Art. 160 of this Act, the 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 pursuant to the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Code of Civil Procedure. All activities undertaken by the Inspector General for

Personal Data Protection before May 25, 2018 remain effective.

The entry into force of the above-mentioned Act of May 10, 2018 on the protection of personal data also entailed the need to reorganize the office. The case in question was transferred [...] on July 2018 to the Team for the Sector of Law Enforcement and Courts and is currently being conducted under the reference number ZSOŚS.440.104.2018.

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.

According to the memorandum of [...] September 2016, an employee of the Office of the Inspector General for Personal Data Protection, the websites [...], [...] and [...] were inspected. It was not stated that any personal data of the Complainant was published on the website [...] and on the website [...]. However, on the website [...], the administrator of which is T. Sp. z o.o., the judgment to the judgment with reference number "[...]" was published, containing the complainant's personal data in the form of the first and last name. The first and last name of the complainant was also anonymised on this website, of the judgment also under the reference number "[...]", in the content of which, in the justification, it was indicated that the person applying for the aid was in prison, the amounts of his monthly income and annual income, as well as information on the debt and maintenance obligations were also listed.

As the President of the Management Board of T. Sp. z o.o., the website [...] publishes on its website judgments and decisions made available to the public on the websites of common courts and the Supreme Administrative Court, pursuant to Art. 5 of the Act of February 25, 2016 on the re-use of public sector information (Journal of Laws of 2016, item 352). Therefore, in the original content, for further publication on the website, [...] it uses anonymised documents, taking into account the purposes resulting from the provisions of the Act on the Protection of Personal Data and other special regulations and published by the Supreme Administrative Court in a generally accessible ICT system. Moreover, as indicated by the President of the Management Board of T. Sp. z o.o., in the documents published on the [...] website under the reference number of the judgment of the Provincial Administrative Court in Lublin [...] and the decision of the Provincial Administrative Court in Lublin, file no. [...] the name of R. S. does not appear and he sent the printouts of the above-mentioned judgment and order.

As a result of subsequent inspections carried out [...] in December 2018, the above-mentioned websites, it was found that the website [...] does not exist, while the remaining websites indicated by the Complainant do not contain his personal data.

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

The Personal Data Protection Act of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Act", defines the rules of conduct in the processing of personal data and the rights of natural persons whose data personal data are or may be processed in data files (Article 2 (1) of the Act). The processing of personal data is lawful only if their administrator has one of the material conditions for the admissibility of processing, listed in art. 23 sec. 1 of the Act (processing, in accordance with Article 7 (2) of the Act, is understood as any operations performed on these data, including their sharing). Each of the ones indicated in Art. 7 pts 2 of the Act, the forms of personal data processing should be based on one of the prerequisites for the legality of the processing of personal data, enumerated in Art. 23 sec. 1 point 1-5 of the act in the case of the so-called ordinary data or art. 27 sec. 2 points 1-10 for sensitive data.

In connection with the arrangements made in the course of the administrative proceedings, regarding the publication of his personal data on the websites indicated by the Complainant as a result of the inspection of the above-mentioned websites of [...] September 2016, it was found that the Complainant's personal data in the form of his name and surname were published only on the website [...] administered by T. Sp. z o.o., but it was not found that they were published on the other websites indicated in the complaint. Moreover, according to the collected evidence, including explanations and printouts submitted [...] on September 2016 by the President of T. Sp. z o.o. these data were no longer published on the [...] website. At the same time, during the subsequent inspection carried out [...] in December 2018, it was found that the website [...] was liquidated. Due to the arrangements made, in particular the fact that personal data is not processed by the Supreme Administrative Court, W. S.A. and as it results from the printouts sent also by T. Sp. z o.o., as well as due to the liquidation of the website [...], the proceedings had to be discontinued as redundant, pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure. The doctrine indicates that: "the objectivity of administrative proceedings", as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means the lack of any of the elements of the material-legal relationship resulting in the fact that it is impossible to settle the matter by deciding on its substance. The discontinuation of administrative proceedings is a formal ruling that ends the proceedings, without a substantive decision (judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, II OSK 1393/09). The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the

case. .

Moreover, as indicated by the Provincial Administrative Court in Warsaw in the judgment of 16 November 2017, reference number II SA / Wa 328/17, the condition for issuing the order is therefore the finding that the provisions on the protection of personal data have been infringed, i.e. the evidence collected in the proceedings must result that the administrator has breached the law by his action or omission. Importantly, the breach of the provisions on the protection of personal data identified by the authority should exist on the date of the decision. Therefore, provided for in Art. 18 point 1 sec. 6 of the Act on the Protection of Personal Data, the sanction in the form of ordering the deletion of personal data cannot be applied in the case at hand.

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

Based on Article. 127 § 3 of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), from this decision, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he 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 Personal Data Protection Office. 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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