

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

ZKE.440.7.2019

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), art. 160 sec. 1 and 2 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) in connection with joke. 12 point 2 and 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 with Art. 57 sec. 1 points a) and f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (Journal of Laws EU L 119 of May 4, 2016, p. 1 and Journal of Laws EU L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding the complaint of Mrs. the legal basis for her personal data by B. Sp. z o.o., F. Sp. z o.o. and V. Sp. z o.o., President of the Personal Data Protection Office discontinues the proceedings.

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms KK, hereinafter referred to as the "Complainant", against the processing of her personal data without legal basis ("illegal rotation, storage, sharing and selling") by B. Sp. z o.o., Fa. Sp. z o.o. (currently: F. Sp. z o.o.) and by V. Sp. z o.o. The complainant also alleged "failure to fulfill the information obligation required by Polish law" to all three named entities processing her personal data. In connection with the presented situation, the complainant requested that "appropriate proceedings be instituted and that the state comply with Polish law".

In the course of the proceedings conducted in this case, the President of the Personal Data Protection Office established the following facts:

According to the entry in the Central Register and Information on Economic Activity of the Republic of Poland (hereinafter

"CEIDG"), the complainant from [...] April 2001 until now runs in W. at: [...], business activity under the name "[...] ". In the open and publicly available (at the Internet address: <https://prod.ceidg.gov.pl/CEIDG/CEIDG.Public.UI/Search.aspx>) the CEIDG records have been disclosed of the complainant's personal data in the scope of: name and surname, entrepreneur's company, NIP number, REGON number, place of business and address for service, date of commencement of business activity, type of predominant economic activity and the (active) status of this activity. To the same extent, the complainant's personal data are processed in an open and publicly available (at <https://wyszukujeregion.stat.gov.pl/appBIR/index.aspx>) National Official Register of National Economy Entities (REGON register) kept by the Central Statistical Office.

Regarding the processing of the complainant's personal data by B. Sp. z o.o. (hereinafter referred to as "B.") it was found that: B. is the so-called a business intelligence agency which, as part of its activities, acquires, processes, analyzes and provides its clients with publicly available data on business entities. As part of its activities, on the website of [...] B. provides free basic data on an economic entity ("company") along with an offer to purchase a report about it;

B. obtained the complainant's personal data related to her business activity in November 2010 from the REGON register;

In accordance with B.'s explanations submitted in these proceedings, the complainant's personal data were removed from the company's database "immediately after we received information that the complainant had reservations regarding the processing of personal data by our company", and as at the date of submitting the explanations ([...] March 2014) were not processed by B.

Currently, the complainant's personal data is not processed by B. Searching for the complainant's data in the search engine on the home page of the portal [...] does not return any result in the form of her personal data.

Regarding the processing of the complainant's personal data by Fa. Sp. z o.o. (currently: F. Sp. z o.o., hereinafter referred to as "F.") it was established that:

The company Fa. Sp. z o.o. (KRS No. [...]) against which the complainant lodged a complaint, as part of her business, she ran a website [...] enabling its users to search for business entities ("companies") from industries that interest them. Data provided on this website (including data obtained from public CEIDG and REGON registers), Fa. Sp. z o.o. acquired - on the basis of an appropriate agreement - from B. Sp. z o.o. ;

As explained by the Fa. Sp. z o.o. the complainant's personal data submitted in these proceedings were removed from the website's resources [...] in March 2014;

On [...] September 2016, the company Fa. Sp. z o.o. (KRS No. [...]) with the company W. Sp. z o.o. (KRS No. [...]) by transferring to the company W. Sp. z o.o. all assets of Fa. Sp. z o.o. Pursuant to Art. 494 § 1 of the Commercial Companies Code W. company entered into all rights and obligations of Fa. Sp. z o.o. (which was deleted from the Register of Entrepreneurs of the National Court Register on [...] January 2017); in particular, it became a party to these proceedings. On [...] March 2017, W. Sp. z o.o. changed its name to "F. Sp. z o.o. ";

At present, the complainant's personal data is not processed by F.. As part of his business, F. does not process and currently make available the data of business entities; it is only a platform for presenting advertisements for the provision of services and offering products, where the data of business entities interested in presenting advertisements concerning them are made available only with their consent after registering on the website.

Regarding the processing of the complainant's personal data by V. Sp. z o.o. (hereinafter referred to as "V.") it was established, inter alia, during the inspection carried out on [...] March 2015 (reference number [...]) that:

V. is an advertising agency that provides advertising services to its clients. As part of his activities, V. does not run web portals, does not acquire or process data about business entities, in particular, does not make them available on any websites; V. has not processed and is not currently processing the complainant's personal data; such processing does not fall within the scope of its activity;

The website with the address [...], indicated by the Complainant as a place where her personal data are unlawfully made available, is currently not functioning, and its subscriber - in accordance with the entry in the National Register of Domains (www.dns.pl/whois) - is currently the company BB AB.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o. 2018 ", ie on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for 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, pursuant to 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 Act of 14 June 1960 Code of Administrative Procedure (Journal of

Laws of 2018, item 2096, as amended), hereinafter referred to as "kpa". All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1-3) of the Act on Personal Data Protection Act 2018).

Pursuant to Art. 57 sec. 1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on the protection of personal data) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), hereinafter referred to as "Regulation 2016/679", without prejudice to other tasks determined pursuant to this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (point a) and deals with complaints brought by the data subject or by a data subject empowered by him, in accordance with Art. 80 by Regulation 2016/679 - the entity, organization or association, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and results of these proceedings within a reasonable time (point f).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the actual state of affairs at the time of issuing this decision. As the doctrine points out, "the public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that a public administration authority issues an administrative decision based on the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure, M. Jaśkowska, A . Wróbel, Lex., EI / 2012). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 stated that: "when examining the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed as at the date of issuing the decision on the matter and whether it is done in a legal manner".

Referring the above to the established facts, it should be emphasized that in the course of the investigation, the President of the Office for Personal Data Protection established that currently the complainant's personal data are not processed by any of

the three companies indicated by it. The companies B. and F. Sp. z o.o. (whose legal successor is Fa.) processed the complainant's personal data from open and publicly available CEIDG and REGON registers, however - as it was shown above, in the part of the justification of this decision describing the factual findings - in connection with the complainant questioning such processing, have stopped processing them and removed them from their databases. Company V., however, never processed the complainant's personal data.

For the above reasons, the proceedings became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Administrative Procedure, as it is irrelevant.

Pursuant to the above-mentioned provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, in whole or in part, respectively. The wording of the above-mentioned provision leaves no doubt that in the event that the proceedings are deemed groundless, the authority conducting the proceedings will obligatorily discontinue them. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Civil Procedure means that there is no element of a material legal relationship, and therefore a decision to settle the matter cannot be issued by deciding on its substance. The prerequisite for discontinuation of the proceedings may exist even before the proceedings are instituted, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before an administrative authority (B. Adamiak, J. Borkowski, Code of Administrative Procedure Comment ", 14th edition, CH Beck Publishing House, Warsaw 2016, p. 491). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case with reference number act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

In the present case, this element of the substantive law relationship which did not exist from the beginning of the proceedings (in the case of V.) or which ceased to exist during the proceedings (in the case of B. and F.) is the fact that the administrators process the complainant's personal data. The finding of this fact would only allow a decision on its legality (the existence of a legal basis for processing) and compliance with the provisions on the protection of personal data (including the compliance by administrators with their information obligations towards the complainant).

The determination by the public administration body of the existence of the condition referred to in Art. 105 § 1 of the Code of

Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and the continuation of the proceedings in such a case would be defective, which would have a significant impact on the result of the case.

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 Code of Civil Procedure of the decision, the party has the right to submit an application for reconsideration of the case within 14 days from the date of its delivery 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 (address: ul. Stawki 2, 00-193 Warsaw). The entry 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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