THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 28

May

2019

DECISION

ZSOŚS.440.154.2018

Based on Article. 105 § 2 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 100 of the Act of 6 December 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 administrative proceedings regarding the complaint of Mr. Ł. M., residing in the Institution Karny in W., ul. [...], to disclose his personal data to persons unauthorized by officers of the Correctional Facility in R.,

I discontinue the proceedings

Justification

The Office for Personal Data Protection received a complaint from Mr. Ł. M., staying in the Correctional Facility in W., ul. [...], hereinafter referred to as the "Complainant", to disclose his personal data to persons not authorized by the officers of the Correctional Facility in R.

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office determined the following.

The applicant was detained in R. Prison in order to execute the sentence of imprisonment. In the content of the submitted complaint, he accused the officers of the Prison in R. disclosing their personal data to unauthorized persons by not securing his health card against unauthorized access, and when receiving official correspondence the necessity to enter his personal data in a notebook to which other inmates staying in this facility have access, and forcing them to disclose their data to third parties.

In response to the complaint, in a letter of [...] December 2018, the Director of the Prison in R., hereinafter referred to as the "Director", explained that if an inmate wishes to benefit from medical assistance, he reports this fact individually to the ward officer. The officer who brings the inmates to the doctor, after opening the door of the residential cell, only provides information

about bringing the inmates to the doctor without providing the personal data of the inmate or prisoners who reported the need for a medical consultation.

As the Director explained, the medical records of inmates are stored in a way that prevents them from being read by unauthorized persons. Inmates are brought to the doctor from individual residential wards in groups. While waiting for admission, there is a queuing system, while during a medical consultation, there is only one patient in the office, and only then gives his personal data in the form of first and last name to identify the inmate.

Moreover, as explained by the Director in the abovementioned in writing, the inmate acknowledges the receipt of correspondence that does not contain a return confirmation of receipt in the register of correspondence, in accordance with the template No. [...] of the Order No. [...] of the Director General of the Prison Service of [...] June 2015 on specimens documents and registration forms. In such a case, the inmates are shown a box in which they should confirm receipt, without the possibility of reading the rest of the register.

As regards the necessity to provide personal data by persons in prison, the Director indicated Art. 116 § 1 point 6 of the Act of June 6, 1997 (Journal of Laws of 2018, item 652, as amended), Executive Penal Code. According to the wording of the above-mentioned of this provision, the convicted person is obliged to comply with the provisions specifying the rules and procedure for the execution of the sentence, the order established in the prison, and to follow the orders of superiors and other authorized persons, and in particular to submit to activities aimed at identifying the person.

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

On [...] February 2019, the Act of 14 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125) entered into force, which in art. 100 states that the proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry into force of this Act, are conducted on the basis of the existing provisions, i.e. 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 the "Act". Pursuant to Art. 7 point 2 of the Act, data processing is understood as any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Providing personal data as one of the methods of their processing may be considered lawful only if the data controller demonstrates that at least

one of the material conditions for data processing is met. These conditions regarding ordinary personal data are set out in Art. 23 sec. 1 point 2 of the above-mentioned of the Act, i.e. it is necessary to exercise the right or fulfill an obligation resulting from a legal provision, and regarding the so-called sensitive personal data in art. 27 sec. 2 point 2, i.e. a special provision of another act allows for the processing of such data without the consent of the data subject and provides full guarantees of their protection under the Personal Data Protection Act.

According to the evidence collected in the case at the Correctional Facility in R., in order to exercise the rights of inmates, procedures are used to prevent unauthorized access to personal data, both during medical consultations or when confirming the receipt of official correspondence.

Due to the findings made in the course of the administrative proceedings, in particular the fact that in the present case the information provided by the complainant had not been confirmed, 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. .

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

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. 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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