THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 28

September

2018

DECISION

ZSOŚS.440.17.2018

Based on Article. 138 § 1 point 3, art. 105 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149) and art. 12 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922 and of 2018, item 138), after conducting administrative proceedings regarding the application of Mr. M. Z., residing in in K., represented by an attorney-at-law, Mr. WG (Kancelaria [...]), for reconsideration of the case ended with the decision of the Inspector General for Personal Data Protection of [...] November 2017 (ref .: [...]), regarding the processing of his personal data by the Police Commander in Chief with headquarters in Warsaw at ul. Puławska 148/150, President of the Office for Personal Data Protection

discontinues the proceedings

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Mr. M. Z., residing in in K., hereinafter referred to as the Complainant, represented by an attorney-at-law, Mr. W. G. (Law Firm [...]), for the processing of his personal data by the Police Commander in Chief based in Warsaw at ul. Puławska 148/150, called hereinafter KGP.

In the content of the complaint, the Complainant's attorney stated that he is seeking the initiation of administrative proceedings regarding irregularities in the implementation of the provisions of the Act on the Protection of Personal Data by KGP in the scope of failure to provide the Complainant with information regarding a possible personal data collection and the following quotation: proceedings in the scope of unlawful processing of personal data, their failure to delete ". The attorney of the Complainant also requested the following quotation: "in the case of establishing in the course of the proceedings that KGP unlawfully processes the applicant's personal data - the end of the proceedings in question by a decision ordering the Police Commander in Chief to delete this set of personal data".

In the course of the administrative procedure conducted in this case, the Inspector General for Personal Data Protection

established the following.

In 2004, criminal proceedings were pending against the Complainant for an offense under Art. 229 § 3 in connection with joke. 18 § 1 and art. 12 of the Act of June 6, 1997, Code of Kama, and in 2002, proceedings against an offense under Art. 284 above. of the Act, the qualification of which was changed in the course of the proceedings into an act pursuant to Art. 286 § 1. On the terms set out in Art. 20 paragraph 2a of the Act of April 6, 1990 (Journal of Laws of 2017, item 2067, as amended) on the Police, in connection with the presentation of the above-mentioned charges, the competent authority - the Police made the so-called trial registration, i.e. he entered the complainant's personal data into the KSIP data set as a person suspected of committing an offense prosecuted by public indictment.

By letter of [...] February 2017, the attorney acting on behalf of the Complainant (his) requested KGP pursuant to Art. 32 and 33 of the Act on the Protection of Personal Data with a written indication of the following quotation: "(...) whether any personal data relating to my client [the Complainant - note GIODO], are processed in the National Police Information System, or in another system with personal data files, the administrator of which is KGP, and an indication of what data it is and the purpose of its processing ".

In the letter of [...] February 2017, Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of KGP, subcommittee J. J. replied to the above-mentioned the complainant's request, informing that, as stated in Art. 20 paragraph 2a, section 2ac and 2b of the Police Act, the Police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, on persons suspected of committing crimes prosecuted by public prosecution, minors committing acts prohibited by the Act as offenses prosecuted by public prosecution, 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, 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 the 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, except that the data on the genetic code only on non-coding regions of the genome; fingerprints; photos, sketches and descriptions of the image; features and

special characters, nicknames; information about: place of residence or stay, education, profession, place and position of work as well as material situation and the condition of property, documents and objects they use, the method of action of the perpetrator, his environment and contacts, the perpetrator's behavior towards the aggrieved parties. Additionally, the said letter explained to the Complainant that the provision of Art. 20 paragraph 2a in fine 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. In view of the above, KGP stated to the Complainant that there were no legal grounds for KGP to provide the information requested by the Complainant.

Authorized by KGP, the Head of the Information Service Department of the Criminal Service Bureau of the Police Headquarters, explained that the complainant did not again (after [...] February 2017) requested the deletion of data from the KSIP.

In connection with the implementation of the norms specified in the Act on the Police, the Police authorities, after the completion of the cases in 2002 and 2004, verified the collected personal data of the Complainant in the scope of acts under Art. 286 § 1 and article. 229 § 3 in connection with joke. 18 § 1 and art. 12 of the Penal Code. Police authorities also carried out the above-mentioned verification in connection with the Complainant's complaint to the Inspector General regarding the processing of his data in the KSIP. 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 filing system (hereinafter referred to as KSIP), and also at least every 10 years from the date of obtaining or downloading the information, deleting the data. Above The head stated that in 2002, the verifications required by the act were carried out in relation to the act under Art. 286 § 1 of the Code of Kama and in 2004 in relation to the act under Art. 229 § 3 in connection with joke. 18 § 1 and art. 12 above of the Act, and subsequently 10 years after the collection of information, i.e. in 2012 and in 2014, and additionally in connection with the complaint to the Inspector General for the processing of data, the complaint against the processing of data was verified in particular in terms of 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-mentioned verification of the data (assessments in terms of their usefulness), the Police authority removed from the KSIP information concerning the complainant, for which the conditions under Art. 20 paragraph 17 and paragraph 17b of the Police Act. However, in the scope of information regarding the above-mentioned offenses, at the time of the above-mentioned verification of data assessments in terms of their usefulness, the Police did not have information indicating the existence of the premises listed in Art. 20 paragraph 17b and 18 of the Police Act.

Currently indicated in art. 20 paragraph 17 above of the Act, a 10-year period of compulsory subsequent verification of the collected data in relation to the above-mentioned the offenses have not yet expired, therefore, in the opinion of KGP, there are no statutory grounds for removing the complainant's data from the KSIP. With regard to the offense under Art. 229 § 3 in connection with joke. 18 § 1 and art. 12 and 286 § 1 of the Penal Code, the Police authority, as a result of verification, concluded that these data are still necessary for the implementation of statutory tasks of the Police, in particular due to the committing within ten years of the introduction of information on this crime to the data collection by another intentional crime by The applicant and because of the information on the manner, methods and forms of the crime. When verifying the information, following the statutory tasks of the Police, the Police Authority noted that the effectiveness of the process of detecting corruption offenses requires the identification of the environments imposed on the occurrence of bribery offenses and the storage of data of the perpetrators of these crimes, as well as the analysis of the methods, forms and circumstances of their operation.

Authorized by KGP, the above-mentioned The Governor added that the type of crimes committed by the applicant (bribery as part of a continuous act and fraud), including the features of the committed crimes, is also important (apart from the failure to meet the above-mentioned time criterion). In addition, in the opinion of the Head of the Chief, the methods and forms of the perpetrator's actions when committing crimes should be taken into account, the number of acts that fulfill the criteria of a crime, subsequently committed by the perpetrator covered by criminal proceedings and registration, which proves, but also excludes the lack of individuality, randomness or incidentality of the activity meeting the criteria of a crime, and other information collected by the Police in connection with the cases conducted about the above-mentioned offenses, or in connection with the implementation of statutory rights of the Police, as well as the fact that the Police authority, as at the date of the verification, did not have information indicating the existence of the premises under Art. 20 paragraph 17b and art. 18 of the Police Act

justifying the removal of information.

Authorized by KGP, Deputy Head of the Information Service Department of the Criminal Service Office of the Police Headquarters, stated that the Police process information for the performance of its statutory tasks, and not for the performance of tasks of other authorities or entities, including those related to recruitment to specific professions, and that it is important that the mere fact of applying for the right to practice a specific profession or the fact of performing a specific profession, even belonging to the professions of public trust, does not constitute grounds for deleting data legally collected by the Police for the purposes of performing tasks related to security and public order.

The Chief also stated that, in accordance with the current factual and legal status of the case, in the light of the verification criteria carried out in accordance with Art. 20 (17) of the Police Act, as well as §29 and 30 of the Regulation of the Minister of the Interior and Administration of July 21, 2016. on the processing of information by the Police, it was established that currently the Police are processing the complainant's personal data necessary for the performance of its statutory tasks on the basis, to the extent and for the purpose specified in the above-mentioned the provisions of the Act on the Police and the Police does not process unnecessary personal data in relation to which the Complainant would have the right to access data and the right to request deletion of such data. Above The Governor also added that in the case the 10-year period to conduct another verification of the collected data in relation to the previously conducted verifications in 2012 and 2014 did not expire, and that the applicant had previously committed an offense before the expiry of the 10-year period for the verification, which was registered in 2002 and 2004, respectively.

After conducting administrative proceedings, the General Inspector for Personal Data Protection on [...] November 2017 issued an administrative decision (ref. Mark: [...], in which the proceedings were discontinued.

Within the statutory deadline, the complainant filed a request for reconsideration of the case ended with the above-mentioned decision, accusing the authority of violating Art. 8 sec. 118 sec. 1 and 3 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922 and of 2018, item 138) and violation of Art. 75 § 1, 77 § 1, 78 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149).

On [...] February 2018, the applicant's attorney informed the authority about the applicant's death. In connection with the letter received, the authority asked the Registry Office in K. to send an abridged copy of the applicant's death certificate.

A copy of the shortened death certificate was delivered to the Office of the Inspector General for Personal Data Protection on

[...] April 2018.

The President of the Personal Data Protection Office, considering the above-mentioned request for reconsideration of the case and taking into account the death of the Complainant, considered the following.

Pursuant to Art. 105 § 1 of the Code of Civil Procedure, when the proceedings for any reason have become redundant in whole or in part, the public administration body issues a decision to discontinue the proceedings, respectively, in whole or in part.

An important premise for the discontinuation of the proceedings is the loss by the entity (in this case the Complainant) participating in the proceedings of the features specified in Art. 28 of the Code of Civil Procedure i.e. a party is anyone whose legal interest or obligation is related to the proceedings or who requests the actions of an authority because of their legal interest or obligation. Such an effect is also caused by the death of the Complainant, if the administrative matter concerns rights directly related to it. The above is confirmed in the literature “The procedure becomes redundant within the meaning of Art. 105 § 1, when the (only) party to the administrative procedure has lost the qualities referred to in Art. 28, or as a result of the party's death in the course of proceedings concerning the rights closely related to the person of the deceased party ”(Wróbel, Andrzej. Art. 105. In: Code of Administrative Procedure. Commentary, VII edition. Wolters Kluwer, 2018.). There is no doubt that the administrative proceedings in the above case concerned the rights directly related to the person of the complainant, and therefore the authority is obliged to discontinue the proceedings.

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

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