THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 20

February

2020

DECISION

ZKE.440.89.2019

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) and pursuant to Art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with joke. 12 point 2, art. 22, art. 18 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 15 sec. 1 in conjunction joke. 12 and art. 57 sec. 1 lit. a) and f) of the Regulation of the European Parliament and of the EU Council 2016/679 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 (Journal of Laws UE L 119 of 04/05/2016), p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 1, as amended), after conducting administrative proceedings regarding the complaint of Mr. IK about failure to fulfill the information obligation by TSA, President of the Data Protection Office Passenger:

1) orders T. S.A. to fulfill the information obligation towards Mr. I. K. by providing him in writing with the information referred to in Art. 15 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 UE L 119 of 04/05/2016, p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 2 as amended)

2) as to the remainder, refuses to accept the request.

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Mr. I. K., hereinafter referred to as the "Complainant", about the failure to fulfill the information obligation towards him by T. S.A., hereinafter referred to as "T.". In the content of the complaint, Mr. I. K. requested the following quotation: "ordering T [...] (...) to remove deficiencies in the processing of personal data by fulfilling (...) the information obligation referred to in Art. 33 paragraph 1-2 in connection with joke. 32 sec. 1 points 1-5 and article. 2 clause 1-2 of the Act

on the Protection of Personal Data in the manner provided for in this Act enabling the exercise of control over the processed (...) data "and on the quotation:" notification to the prosecutor pursuant to Art. 304 § 2 of the Code of Criminal Procedure "in the event of failure to provide evidence confirming the fulfillment of the information obligation with regard to him.

On the basis of the evidence gathered in the case at hand, the following facts were established.

By letter of [...] October 2017, the Complainant, acting pursuant to Art. 33 paragraph 1-2 in connection with joke. 32 sec. 1 points 1-5 of 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 "1997 Act", turned to T. With a request to provide him with the information referred to in art. 32 sec. 1-5 (proof: a copy of the complainant's letter of [...] October 2010 with a return confirmation of its receipt). Due to the failure by T. to reply to the reported under Art. 33 paragraph 1 of the 1997 Act, the complainant submitted a complaint to the Inspector General for Personal Data Protection, in which he demanded: removal of deficiencies in the processing of personal data by fulfilling the information obligation referred to in art. 33 paragraph 1-2 in connection with joke. 32 sec. 1 points 1-5 and article. 2 clause 1-2, as well as notifications of the prosecutor's office in the absence of evidence that the above-mentioned obligation.

To the explanations of [...] April 2018, T. attached letters fulfilling the information obligation towards the Complainant, however, without proof of their effective delivery. Therefore, in a letter of [...] October 2019 (reference number: ZKE.440.89.2019. [...]), he was requested to complete the above-mentioned information, and in response to this request, he informed that quotation :,, Due to the fact that the letters of [...] March 2018 and of [...] April 2018 were sent to the Complainant by ordinary letters (...)

The company does not have a copy of the above-mentioned registered letters ".

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

I. At the outset, it should be noted that on May 25, 2018, with the 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 ", The Office of the Inspector General for Personal Data Protection has become 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 1997, in accordance with the principles set out in the Code of Administrative Procedure (Journal of Laws of 2017, . item 1257 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) and (2) of the Act of May 10, 2018 on the protection of personal data).

In the case at hand - with regard to the Complainant's complaint about T.'s failure to fulfill the information obligation - it should be noted at the outset that although the Complainant applied for compliance with the information obligation in 2017, i.e. pursuant to the provisions of the 1997 Act, it is an administrative body public issues an administrative decision on the basis of the provisions of law in force at the time of its issuance, i.e. after May 25, 2018 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons 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 UE L 119 of 04/05/2016, p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 2 of d.), hereinafter referred to as the GDPR. Pursuant to Art. 33 paragraph 1 of the Act of 1997, at the request of the data subject, the data controller was obliged, within 30 days, to inform about his / her rights and to provide, regarding his personal data, the information referred to in art. 32 sec. 1 points 1 - 5a of the Act, and in particular provide in an intelligible form: what personal data was contained in the set, how the data was collected, for what purpose and scope the data was processed, to what extent and to whom the data was made available. The commented provision was related to Art. 32 of the Act, which provided that the data subject could request the data controller to provide him with certain information. In accordance with paragraph 1 of this provision, each person had the right to control the processing of data concerning him, contained in data files, and in particular the right to: obtain exhaustive information whether such a set exists, and to determine the data controller, the address of its registered office and full name, and if the data controller is a natural person - his place of residence and first and last name (point 1), obtain information about the purpose, scope and method of processing data contained in such a set (point 2), obtain information from when his data is processed in the set concerning, and providing in an intelligible form the content of these data (point 3), obtaining information about the source from which the data concerning it originate, unless the data controller is obliged to maintain state, official or professional secrets in this respect (point 4), obtaining information on how to share data, in particular information about recipients or categories of recipients who these data are made available (point 5). It should be emphasized that the administrator is obliged to respond to the application under Art. 33 for the fulfillment of the information obligation, even if it does not process data, and it will of course be a reply informing about this fact.

The information obligation provided for in Art. 33 of the Act was aimed at providing persons whose personal data are

processed with access to information about the circumstances of their processing. Correct and reliable fulfillment of this obligation by the data controller was necessary to ensure that the data subject can control the correctness of the processing of personal data. As pointed out by the Supreme Administrative Court in the judgment of 30 July 2009 (file reference number I OSK 1049/08): "There should be no doubt that failure to comply with this [information obligation specified in Art. 33 of the Act is a breach of the provisions of this Act [on the protection of personal data] within the meaning of Art. 18, entitling and obliging the Inspector General for Personal Data Protection to issue an administrative decision on ordering the restoration to legal status, i.e. in the situation specified in Art. 33 (1) and (2) of this Act - in the matter of ordering the administrator of personal data to fulfill the information obligation referred to in this article ".

Currently, it should be stated that the fulfillment of the information obligation at the request of the data subject is reflected in Art. 15 sec. 1 GDPR. This provision states that the data subject is entitled to obtain from the controller confirmation as to whether personal data concerning him or her are being processed, and if so, to obtain access to it.

For the correct interpretation of the provisions relating to the above-mentioned obligation, Recital 63 of the GDPR Preamble is important, which states that "Every natural person should have the right to access the collected data concerning him and should be able to easily exercise this right at reasonable intervals to be aware of the processing, and be able to verify the lawfulness of the processing (...)". Art. 15 sec. 1 GDPR aims to provide persons whose personal data are processed with access to information about the circumstances of their processing. Correct and reliable fulfillment of this obligation by the data controller is necessary to ensure that the data subject controls the correctness of the processing of personal data. Submitting the application, depending on its content, obliges the data controller to provide full information about the data processing process in the scope not narrower than provided for by the provision of Art. 15 GDPR. This provision specifies the minimum information that the data controller must provide to the applicant, but it is important that the information requested by the Complainant under this provision refers to his person and corresponds to the definition of personal data defined in the GDPR. At the same time, it should be noted that pursuant to Art. 12 GDPR, the controller shall take appropriate measures to provide the data subject with all the information referred to in Art. 13 and 14 GDPR, and conduct all communication with her pursuant to Art. 15-22 and 34 of the GDPR on processing. Information shall be provided in writing or otherwise, including, where appropriate, by electronic means. If the data subject so requests, the information may be provided orally, provided the identity of the data subject is confirmed by other means.

In the course of the proceedings, the collected evidence showed that T. had no evidence that he had effectively provided the complainant with the information indicated in Art. 32 sec. 1 items 1-5 of the 1997 Act, thus fulfilling the information obligation towards the Complainant. In particular, copies of the letters containing the complainant's address details and the confirmation of his correspondence address generated from the system cannot be considered as proof of correspondence delivery. The copies of the letters presented by T. in the explanations of [...] October 2019 only prove the fact that they were prepared, and do not constitute evidence that the applicant was effectively acquainted with their content. In the absence of undoubtedly presented evidence by T. confirming the dispatch of letters addressed to the Complainant, it should be considered that the information obligation provided for in Art. 33 paragraph. 1 of the 1997 Act was not implemented. Thus, the President of the Personal Data Protection Office resolved as in point 1 of the decision conclusion.

II. On the other hand, referring to the applicant's request to notify the prosecutor pursuant to Art. 304 § 2 of the Act of 6 June 1997 Code of Criminal Procedure (Journal of Laws of 2020, item 30), it should be indicated that a party to administrative proceedings may request the President of the Personal Data Protection Office to issue an administrative decision only, and not a notification of committing a crime that the President of the Personal Data Protection Office decides ex officio about the necessity of submitting it. The above position of the President of the Personal Data Protection Office was confirmed by the Supreme Administrative Court, which in its judgment of November 21, 2002 (file no. II SA 1682/01) stated that "in the light of the Act, violation of its provisions becomes a source of administrative liability leading to in fact, only to the obligation to restore lawfulness and criminal liability. However, only the first type of responsibility is exercised in the form of an administrative decision. " The Supreme Administrative Court also stated that "if the results of the control activities indicate that the action or omission of the head of an organizational unit, its employee or another natural person being the data controller bears the features of a crime, GIODO is obliged to submit a notification of the crime to the body appointed to prosecute crimes. (...). However, it does not do this, as in the case of Art. 18 by way of an administrative decision, but by way of an application, which is the exercise of its competence in this case. This is indicated both by the explicit definition of the form of the decision in Art. 18 of the 1997 Act, and the lack of this definition in Art. 19, as well as the essence and importance of the administrative decision. It imposes on the party certain rights or obligations or refuses to grant them. Meanwhile, an application to the prosecutor's office with information about a suspected crime is not of this nature. As a rule, it cannot be settled in the form of a decision. " Also in the judgment of November 19, 2001 (file no. II SA 2702/00), the Supreme Administrative Court in Warsaw

indicated that "a person seeking protection of his cases under the above-mentioned Act on the Protection of Personal Data is not the subject of proceedings calculated on issuing a decision to notify a relevant authority about an offense in the scope of personal data processing and may not be demanded by GIODO in the administrative and legal forms of this procedure. (...)

GIODO may act only on the basis and in the forms provided for by the Act. The manner of settling the matter on the merits is regulated by the above-mentioned Art. 18 of the Act of 1997, granting GIODO the power to order the administrator guilty of violation to restore the lawful state."

Bearing in mind the above, the President of the Personal Data Protection Office resolved, as in point 2 operatives.

Based on Article. 127 § 3 of the Code of Administrative Procedure, 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 (address: ul. Stawki 2, 00-193 Warsaw). The entry fee for the complaint is PLN 200.00. The party has the right to apply for the right to assistance, including exemption from court costs.

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