

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 08

June

2020

## DECISION

ZKE.440.80.2019

Based on Article. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, 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 UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding a complaint by GB, against the processing of his data personal data for marketing purposes and failure to comply with the request to delete this data by JM, running a business under the name of F., President of the Office for Personal Data Protection 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 GB (hereinafter referred to as the "Complainant") about the processing of his personal data for marketing purposes and failure to comply with the request to delete this data by JM, running a business under the name of F. (hereinafter referred to as the "Administrator"). The complainant submitted that on [...] June 2015, he sent a statement to the Administrator about the withdrawal of consent to the processing of his personal data for marketing purposes and a request to delete this data by the Administrator. In a letter of [...] June 2015, addressed on behalf of the Administrator to the Complainant, it was indicated that the Complainant's personal data had been removed from the system in accordance with his request. The complainant pointed out that from January 2017 he had again received phone calls made on behalf of the Administrator. The complainant indicated that the last connection took place on [...] August 2017. In connection with the above, the Complainant requested an

enforcement from the Administrator of his statement, including the revocation of consent to the use of his personal data for marketing purposes and requesting their destruction.

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

The administrator ran a business under the name of F., entered in the Central Register and Information on Economic Activity of the Republic of Poland (hereinafter referred to as "CEIDG"). The system discloses an entry according to which the Administrator's business activity indicated above is suspended from [...] November 2017.

On [...] June 2015, the Complainant appealed to the Administrator to revoke the consent to the processing of his personal data and request the deletion of this data.

On [...] June 2015, the Complainant was informed in writing that his personal data had been deleted from the Administrator's IT system.

From January 2017, telephone calls directed on behalf of the Administrator to the Complainant were resumed. The complainant provided 5 mobile phone numbers from which calls were made. The last connection was made on [...] August 2017.

After considering the evidence collected in the case, the President of the Personal Data Protection Office 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 stated that in the course of the investigation, the President of the Personal Data Protection Office established that currently the complainant's personal data are not processed by the Administrator.

The Complainant's request to stop processing for marketing purposes and to delete his personal data, if it was accepted by the Administrator (which was confirmed by the Administrator's letter to the Complainant from [...] June 2015), this operation was performed in an ineffective manner. This is confirmed by the fact that several months after the declaration of data deletion, the

Complainant again received unsolicited phone calls with marketing content, and the statements of the interlocutors indicated that they were calls on behalf of the Administrator. This leads to the conclusion that during the time when the Complainant received the above-mentioned telephones, i.e. from January to August 2017, the Complainant's personal data remained unremoved in the Administrator's system, and what is more, they were used again for marketing purposes.

The last contact made on behalf of the Administrator with the Complainant using his personal data took place on [...] August 2017. After this date, the Administrator no longer contacted the Complainant, which may be the basis for a conclusion that the Administrator finally deleted the Complainant's personal data from the IT system, to which it undertook in 2015.

At the time of issuing this decision, the Administrator's economic activity, conducted under the name of F, remains in suspension, starting from [...] November 2017. The entry in the CEIDG business activity register is declaratory and does not prejudice the actual status of the business. However, such a long suspension period justifies the finding that these activities are not actually carried out. Moreover, it should be taken into account that, as a rule, suspension of activity is possible in a situation where the entrepreneur does not employ employees, in accordance with Art. 22 sec. 1 of the Act of March 6, 2018 - Entrepreneurs Law (i.e. Journal of Laws of 2019, item 1292, as amended), except for the exceptions provided for in sec. 2 of the above-mentioned provision.

All the above findings, considered jointly, lead to the factual presumption that the entity indicated in the present case as the Data Administrator, as at the date of this decision, no longer conducts business activity and does not process the Complainant's personal data.

For the above reasons, the present administrative procedure became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Civil Procedure

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 doctrine states that "The discontinuation of the proceedings is not dependent on the will of the administrative body, and even less left to the discretion of the body - this body is obliged to discontinue the proceedings if it is found to be irrelevant. (...) The redundancy of the proceedings may also result from a change in the facts of the case. The proceedings must be deemed to be groundless as a result of the cessation of the facts subject to regulation by the administrative authority by way of a decision (cf. the justification of the judgment of the Supreme Administrative Court of 29 September 1987, IV SA 220/87, ONSA 1987, No. 2,

item 67) "- Przybysz Piotr Marek. Art. 105. In: Code of Administrative Procedure. Comment updated. LEX Legal Information System, 2019.

The lodging of a complaint by the Complainant should be assessed as justified - the initiation of these administrative proceedings by the Complainant could have a significant impact on the final fulfillment of his requests and respect for the law regarding the processing of his personal data by the Administrator. In the course of the present case, however, there was a premise that the proceedings were groundless and is a consequence of the fact that the data controller indicated in the complaint does not actually perform any economic activity anymore.

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 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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