

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 10

February

2020

## DECISION

ZKE.440.36.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, of 2019, item 1133), art. 160 sec. 1 and 2 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2019, item 1781), Article 18 para. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), Art. 12 in connection with Art. 15 sec. 1, Article 17 (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 (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), after conducting administrative proceedings regarding the complaint of Mr. the processing of his personal data by B. Sp. z o.o., President of the Personal Data Protection Office,

1) orders B. Sp. z o.o. fulfillment of the information obligation towards Mr. M. C. by informing him to whom and to what extent his personal data have been transferred,

2) orders to delete the data of Mr. M. C., obtained in connection with the creation of an account on the website [...].

## JUSTIFICATION

The President of the Personal Data Protection Office (formerly the Inspector General for Personal Data Protection) received a complaint from Mr. M. C., hereinafter referred to as "the Complainant", about irregularities in the processing of his personal data by B. Sp. z o. o., hereinafter referred to as: the "Company".

The complainant asked for the removal of his personal data processed by the Company on the website [...], hereinafter referred to as: "the website", and for the fulfillment of the information obligation towards him.

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office, hereinafter referred to as: "the President of the Personal Data Protection Office", determined the following.

1. The company runs an internet portal - [...] - operating at the internet address [...]. In accordance with the website regulations,

discount coupons for products or services of other companies are offered on the website. Access to the services is free and requires registration. Registration involves the creation of a user account, which is assigned to the e-mail address and password provided in the registration form. The user makes a purchase on the website of the website, a coupon with a one-time code authorizing the user to use the service offered in a given action or to purchase a product appears on his account.

2. The documents attached to the Company's explanations show that the Complainant purchased the goods on the site on [...] January 2015, providing personal data: name, surname, contact telephone number, home address and e-mail address: [...]. The complainant returned the purchased goods.

3. The e-mail attached to the complaint shows that the Complainant on [...] February 2015 sent to the Company's e-mail [...] a request for the quotation "to remove (...) from the database of all (...) personal data and delete (...) accounts on the website [...]" . On the other hand, the content of the complaint shows that the complainant quoted "on [...] 2015, after checking that (...) the account is still active", requested the removal of personal data in the same way, referring to the relevant provisions. The e-mail from [...] 2015 also contained a request for information to whom and to what extent my data had been transferred. "

3. The explanations provided by the Company to the GIODO in a letter of [...] October 2015 show that the Complainant registered on the website on [...] January 2015. He placed the order by entering the e-mail address: [...]. The company also explained that the acceptance of the website regulations constitutes the consent of the user to the collection and processing of his personal data by the Company and its partners, thus the user has consented to receive by electronic means to the e-mail address provided commercial information regarding the website's own goods and services and partners of the Company. The company also informed GIODO that the Complainant did not request the fulfillment of the information obligation under Art. 33 of the 1997 Act. In the enclosure of the letter, the Company sent copies of the correspondence sent to the Complainant on [...] September 2015, in which it explained to him that the address [...] does not exist in the Company's database, and that the account was opened to the e-mail address provided on the coupon ([ ...]) has been deactivated as requested.

In this factual state, the President of the Personal Data Protection Office considered the following.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data (Journal of Laws 2019, item 1781), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Act, proceedings conducted by the Inspector General for Personal Data Protection,

initiated and not completed before the date of entry into force of this Act, are conducted by the President of the Personal Data Protection Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended, and of 2018, item 138), hereinafter: "the 1997 Act", in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal U. of 2018, item 2096, as amended), hereinafter referred to as "kpa". At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on

From May 25, 2018, also Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted on the basis of the Act of August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure) and on the basis of the Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed before the date of entry into force of new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which "a 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 the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071) M. Jaśkowska, A. Wróbel, Lex., EI / 2012).

In the judgment of May 7, 2008 in the case file ref. Act I OSK 761/07 The Supreme Administrative Court 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 on the date of issuing the decision on the matter and whether it is done in a lawful manner" .

At the time the event described by the applicants took place, the 1997 Act was in force. The provision of fundamental importance for the assessment of the legality of the processing of personal data was Art. 23 sec. 1 of the 1997 Act (Article 6 (1) of Regulation 2016/679 respectively). Pursuant to Art. 23 sec. 1 point 3 of the Act of 1997, the processing of personal data

is lawful when it is necessary for the performance of the contract, when the data subject is its party or when it is necessary to take action before concluding the contract at the request of the data subject (respectively Article 6 (1) (b) of Regulation 2016/679).

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the act. According to this provision, in the event of a breach of the provisions on the protection of personal data, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying, or failure to provide personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data.

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 or her rights and to provide information referred to in art. 32 sec. 1 points 1 - 5a of the Act of 1997, 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 of 1997, 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 his seat 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 the data is processed in the set concerning it, 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, professional or professional secrecy in this respect (point 4 ), obtain information on how to share data, in particular information about recipients or categories of recipients, which These data are made available (point 5), to obtain information about the premises for the decision referred to in art. 26 a sec. 2 (point 5a) of the 1997 Act.

The complainant complained about the Company's failure to fulfill the information obligation pursuant to the provisions of the 1997 Act. A public administration body issues an administrative decision pursuant to the provisions of law in force at the time

of its issuance, i.e. after May 25, 2018, pursuant to Regulation 2016/679. Pursuant to Art. 15 sec. 1 of Regulation 2016/679, the data subject is entitled to obtain from the administrator confirmation whether personal data concerning him or her are being processed, and if so, access to them.

At the same time, it should be noted that pursuant to Art. 12 Regulation 2016/679, the controller shall take appropriate measures to provide the data subject with all the information referred to in Art. . 13 and 14 and conduct any communication with her pursuant to Art. 15 - 22 and 34 on processing. Information shall be provided in writing or otherwise, including, where appropriate, electronically. If the data subject requests it, the information may be provided orally, provided that the identity of the data subject is confirmed by other means.

In addition, the data controller fulfilling the information obligation provided for in Art. 33 of the Act of 1997 is necessary to ensure that the data subject controls the correctness of the processing of personal data. In the judgment of 30 July 2009 (file reference number I OSK 1049/08), the Supreme Administrative Court stated that "There should be no doubt that failure to comply with this obligation (information obligation specified in Art. 33 of the Act) is a breach of the provisions of the Act within the meaning of Art. . 18, entitling and obliging the Inspector General for Personal Data Protection to issue an administrative decision ordering the restoration of the legal status, i.e. in the situation specified in Art. 33 paragraph. 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 ”.

The complainant also demanded that the Company delete his personal data processed on the website [...]. In response, the Company informed the Complainant that it had "deactivated" his account on the website. However, it is not clear from the response provided by the Company whether it deleted the Complainant's personal data.

Pursuant to Art. 32 sec. 1 point 6 of the Act of 1997, the data subject has, inter alia, the right to request the deletion of your personal data when they are no longer necessary to achieve the purpose for which they were collected. However, in accordance with the content of Art. 17 sec. 1 lit. a of Regulation 2016/679, the data subject, if his data is no longer necessary for the purposes for which it was collected or otherwise processed, has the right to request the administrator to immediately delete his personal data, and the administrator is obliged without delete the personal data without undue delay.

It should be acknowledged that after the deactivation of the account, the Complainant's personal data are no longer necessary for the Company for the purposes for which they were obtained, therefore, pursuant to Art. 17 sec. 1a of the Regulation 2016/679, the Company should delete these data.

Summarizing the above, in the opinion of the President of the Personal Data Protection Office, the provisions of the Personal Data Protection Act were infringed in this case, therefore there are grounds for applying the provision of Art. 18 sec. 1 point 1 of the 1997 Act, according to which the Inspector General (currently the President of the Personal Data Protection Office), by way of an administrative decision, orders the restoration of the legal status.

Therefore, 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 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 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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