

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 17

July

2019

DECISION

ZSOŚS.440.64.2019

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 5 sec. 1 point 6 in connection with art. 12 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, hereinafter: the Act of December 14, 2018) after conducting administrative proceedings in on the complaint of Mr. IM, replaced by the attorney of adv. K. Ż. (Kancelaria [...] with its seat in W.), against the refusal to provide information on the processing of his personal data by the Police Commander in Chief in Warsaw (Police Headquarters, ul. Puławska 148/150, 02-624 Warsaw) in the National Information System The police,

I refuse to accept the application

Justification

The Office for Personal Data Protection received a complaint by Mr. IM (hereinafter: "the Complainant") about irregularities in the processing of his personal data by the Police Commander in Chief in Warsaw (hereinafter: the "Commander"), consisting in the processing of his personal data in the National Information System Police (hereinafter referred to as: "KSIP"). The complainant included in the complaint a request to provide IM with information on whether his personal data is being processed in KSIP, to provide information - if IM data is processed in the KSIP database - about: a) the purpose and legal basis of their processing, b) categories of personal data and data which are processed, c) recipients or categories of recipients to whom the personal data have been disclosed, in particular about recipients in third countries or international organizations, d) the period of storage of personal data, and if it was not possible, about the criteria for determining this period, e) the source of the data, f) the rights of IM in relation to the processing of his personal data and granting the Complainant access to his personal data by providing a copy of his personal data or an extract from this data in an accessible form.

In justifying his request, the complainant argued that he had taken steps to obtain information on whether his personal data

were in national police databases, including in Poland, and ultimately to delete them. He emphasized that [...] on February 2018, by way of a decision, the Intelligence and Criminal Information Bureau of the General Police Headquarters refused to provide him with the requested information. He added that in a letter of [...] March 2019, the Police Commander in Chief refused to provide the complainant with information about whether he was processing his personal data, indicating that the Police are not obliged to inform the person whose personal data they process about the fact of processing such data. as well as on the scope of processing or sharing personal data. In the opinion of the Complainant, in a situation where the data subject requests the exercise of his rights in relation to personal data processed by the Police, this is with the exception of the circumstances provided for in Art. 26 of the Act, there are no grounds for the Police to refuse to comply with her request. In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

By letters of [...] May 2019, the President of the Personal Data Protection Office informed the Complainant and the Commander of the initiation of explanatory proceedings and asked the Commander to comment on the content of the complaint and submit written explanations.

In a letter of [...] June 2019 - [...] (a copy of the letter in the case file), the Commandant indicated that the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters, acting under the authority of the Police Commander in Chief, replied to the complainant , indicating that the Police process personal data in accordance with art. 20 of the Act of 6 April 1990 on the Police (Journal of Laws of 2019, item 161), hereinafter referred to as: "the Act on the Police". In the justification of the position, the Complainant was provided with the legal grounds for the processing of personal data by the Police, in particular art. 20 paragraph 1-1d, paragraph 2b-2c and art. 20 paragraph 2ad and paragraph 2ba of the Police Act, their scope and purpose of processing. In addition, the letter in question clearly indicated that the legal act defining the rules and procedure for collecting and sharing information, including personal data, is the Police Act, in particular Art. 20 paragraph 2a. The complainant was also informed about a different procedure and rules for processing information in the KSIP. He added that personal data collected in accordance with the provisions of art. 20 paragraph 1 -1d and 2ad-2c of the Police Act, within the limits of the statutory powers of the Police, for the implementation of tasks in the field of safety and public order, processed without the knowledge and consent of the data subject, and also - in certain cases resulting from the Act on the Police - secretly , are subject to restrictions in terms of access to information, including obtaining

information about their processing and deleting information legally collected in the performance of statutory tasks. As a result, in the opinion of the Police Commander in Chief, disclosure of the information requested by the Complainant could violate the obligation to ensure the protection of the forms and methods of carrying out tasks and information. At the same time, the Commandant applied for recognition that his action as an administrator within the meaning of the provisions on the protection of personal data with regard to information, including personal data, processed in the KSIP data files, was lawful.

The President of the Office for Personal Data Protection informed the Complainant and the Police Commander in Chief in letters of [...] June 2019 about conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility to comment on the collected evidence and materials and the requests made in accordance with the content of art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings.

Until the date of this decision, neither of the parties responded to the collected evidence.

In these facts, the President of the Personal Data Protection Office considered the following.

The complainant alleged that the Police Commander in Chief refused to provide information about his personal data processed at the National Police Headquarters.

The Act of December 14, 2018 specifies, inter alia, rules and conditions for the protection of personal data processed by competent authorities for the purpose of identifying, preventing, detecting and combating prohibited acts, including threats to public safety and order, as well as the execution of pre-trial detention, penalties, order penalties and coercive measures resulting in deprivation of liberty (art. 1 item 1 point 1).

Based on Article. 8 sec. 2 of the Act of December 14, 2018 in the event of violation of the provisions on the protection of personal data collected for the purposes referred to in art. 1 point 1, the President of the Office, by way of an administrative decision, orders the controller or the processor to restore the lawful state, and in particular:

elimination of shortcomings;

supplementing, updating, rectifying, disclosing or not disclosing personal data;

application of additional security measures for the collected personal data;

securing personal data or transferring them to other entities;

deletion of personal data;

imposing temporary or permanent restrictions on processing and transfer, including the prohibition of processing.

In the field of processing various types of information, including personal data, the function of the Police is special, as it collects information that is subject to a special regime and protection. This is reflected in Art. 20 paragraph 1 and sec. 2a of the Police Act, on the basis of which the Police, subject to the limitations resulting from art. 19, may obtain information, including classified information, collect, check and process it (section 1). The police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, about the following persons, also without their knowledge and consent: about persons suspected of committing crimes prosecuted under public indictment, by the Act as crimes prosecuted by public indictment, about persons with undetermined identity or trying to conceal their identity, about persons posing a threat, referred to in the Act of 22 November 2013 on proceedings against persons with mental disorders posing a threat to life, health or sexual freedom of other persons, on wanted persons, missing persons and persons against whom protection and assistance measures, provided for in the Act of 28 November 2014 on protection and assistance, provided for in the Act of 28 November 2014 on the protection of and help for the victim and the witness (Journal of Laws of 2015, item 2 1) (Art. 20 paragraph 2a of the Police Act).

Detailed rules for the processing of personal data of persons mentioned in art. 20 paragraph 2a of the Police Act is specified in the regulation of the Minister of the Interior and Administration of August 24, 2018 on the processing of information by the Police (Journal of Laws of 2018, item 1636), hereinafter referred to as the "Regulation". Pursuant to § 10 of the regulation in question, the Police operates the National Police Information System (KSIP), which is a set of data sets in which information is collected, checked, processed and used, including personal data referred to in art. 20 paragraph 2a points 1-6, sec. 2ac and paragraph. 2b of the Police Act. The KSIP may also process information, including personal data, to which the Police is entitled to collect, obtain and process on the basis of separate acts, if this contributes to the coordination of information and more effective organization and implementation of the statutory tasks of the Police in the field of detecting and prosecuting perpetrators of crimes. and preventing and combating crime, as well as protecting human life and health (§ 10 (2) of the Regulation). It should be emphasized that the criterion of the necessity to process personal data in the KSIP must always be related to the statutory tasks of the Police, the implementation of which is to be achieved by the provisions of Art. 20 paragraph 1, sec. 2a and 2b in connection with Art. 20 paragraph 17 of the Police Act. Pursuant to Art. 20 paragraph 17b, the personal data referred to in para. 17, shall be deleted if the Police authority has obtained credible information that: the act constituting

the basis for entering the information into the file was not committed or there is no data sufficient to justify the suspicion of its commission; the event or circumstance in relation to which the information was entered into the collection does not bear the characteristics of a prohibited act; the data subject has been acquitted by a final court judgment.

In addition, Chapter 5 of the Regulation indicates the criteria for verifying the storage of personal data in the system in terms of their further usefulness, which include, inter alia, the type and nature of the crime committed, the type and nature of the infringed good protected by law, the form of the perpetration, the form of the intention, the time that has elapsed since the data was entered into the filing system, the validity of the conditions of legality and the necessity of further data processing to perform statutory tasks, the occurrence of the circumstances specified in art. 20 paragraph 17b and 18 of the Police Act, and in the case of dactyloscopic data, the occurrence of the circumstances specified in art. 21 l of paragraph 2 and art. 21m of this act.

In the course of the proceedings, the President of the Office for Personal Data Protection established that the complainant's attorney requested the Police Commander in Chief to provide information on whether the complainant's personal data were processed in the National Labor Inspectorate.

In response to the above request, the Police Commander in Chief refused to provide the Complainant's attorney with the requested information, pointing to Art. 20 paragraph 2a of the Police Act and Art. 26 of the Act of December 14, 2018.

In this case, the content of Art. 13 sec. 1 of the Act of December 14, 2018, which provides that the competent authorities process personal data only to the extent necessary to exercise the right or fulfill the obligation resulting from the law. The legal basis for the processing of personal data of persons against whom the proceedings were conducted by the Police authorities is art. 20 paragraph 1 of the Police Act, pursuant to which the Police, subject to the limitations resulting from Art. 19, can obtain information, including covertly, collect, check and process it. The police may download, obtain, collect, process and use, in order to carry out statutory tasks, information, including personal data - about persons suspected of committing crimes prosecuted by public prosecution - also without their knowledge and consent (section 2a).

Bearing in mind the above, it should be stated that the Police Commander in Chief was not obliged to provide the Complainant with information regarding the possible processing of his personal data in the National Police Registry. It results directly from Art. 20 paragraph 2a of the Police Act. Moreover, one should pay attention to Art. 26 sec. 1 of the Act of December 14, 2018, pursuant to which the information referred to in the provisions of Chapter 4 (rights of the data subject) is not provided, and

personal data is not disclosed if it could result in:

disclosure of information obtained as a result of operational and reconnaissance activities;

making it difficult or impossible to recognize, prevent, detect or combat prohibited acts;

hindering the conduct of criminal proceedings, criminal executive proceedings, penal fiscal proceedings or in cases of petty or fiscal offenses;

threat to human life, health or public safety and order;

threats to national security, including defense or security, and the economic foundations of the functioning of the state;

significant infringement of the personal rights of other people.

The above provision regulates the limitations of the information obligations of the data controller. Considering that the controller of the data processed in the KSIP is the Police Commander in Chief and the statutory tasks of the Police, in this case, the disclosure of information about the processed data in the internal Police system, which is the KSIP, may undoubtedly result in the fulfillment of the conditions referred to in the above provision.

In view of the above, it should be stated that the manner of the Police's conduct in the discussed scope does not raise any doubts, and the complainant's complaint does not deserve to be taken into account.

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

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), the party has the right to lodge a complaint with the Provincial Administrative Court against this decision, 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.

2019-07-17