

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 04

January

2019

DECISION

ZSOŚS.440.106.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096), art. 12 point 2, art. 22, art. 23 sec. 1 point 2, art. 27 sec. 1 and 2 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) in connection with Art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), after conducting administrative proceedings regarding the complaint of Mr. JR, residing in S., to disclose his personal data by the Warsaw Police Commander for the District Court for W., the President of the Office for Personal Data Protection

I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. IN.

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office determined the following.

The applicant is a police officer and served at the Capital Police Headquarters in Warsaw and was summoned as a witness in the proceedings conducted by the Court for W., number [...], in the manner specified in Art. 134 § 1 of the Act of 6 June 1997, Code of Criminal Procedure (Journal of Laws of 2018, item 1987), hereinafter referred to as the "CCP".

The District Court for W., in a letter of [...] September 2015, requested the Capital Commander of the Police to "deliver the attached summons to witness J. R." and for "influencing the officer of the Military Police to appear before the court", while the Warsaw Police Commander, in a letter of [...] September 2015, provided personal data in the form of the address of residence and data on the applicant's health to the District Court for W. ,

In response to the complaint, in a letter of [...] June 2016, the Warsaw Commander of the Capital City of Police explained that

he had obtained the applicant's personal data, inter alia, in connection with the applicant's inclusion in the emergency card and, following the order of the District Court for W. court, data on the place of residence of Mr. JR, in order to inform him about the need to appear at the hearing, to be held [...] October 2015, and to fulfill the obligation imposed in Art. 15 § 2 of the CCP Act.

It should be noted here that on the date of entry into force of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), i.e. May 25, 2018, the General Office The Personal Data Protection Inspector has become the Office for Personal Data Protection. Pursuant to Art. 160 of this Act, the 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 in accordance with the principles set out in the Code of Civil Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

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

Pursuant to Art. 1 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 "Act", personal data may be processed if it serves the public good, the good of the person the data subject or the good of third parties. Pursuant to Art. 7 point 2 of this Act, data processing shall mean any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems.

Providing personal data as one of the methods of their processing may be considered lawful only if the data controller demonstrates that at least one of the material conditions for data processing is met. The conditions for ordinary personal data are set out in Art. 23 sec. 1, and regarding the so-called sensitive personal data in art. 27 sec. 2 of the act on the protection of personal data.

In the judgment of 31 July 2014 I OSK 742/13 the Supreme Administrative Court emphasizes that the special provision allowing for the processing of sensitive data of a person without their consent, referred to in the above-mentioned art. 27 sec. 2 point 2 of the Act on the Protection of Personal Data - must clearly, literally indicate the admissibility of processing such data so that it can be processed, and at the same time it should contain real legal guarantees of their protection. The related

standard should be analyzed taking into account Art. 51 sec. 2 of the Polish Constitution.

As it results from the collected material, the court did not ask the administrator of personal data, in this case the Commander of the Capital City of Police, to provide the details of the witness' address of residence / registration / correspondence address, but to "deliver the summons" and "influence" the witness, to appear for the next hearing in a letter of [...] September 2015. This method of sending service is provided for in Art. 134 § 1 of the Act of 6 June 1997, Code of Criminal Procedure (Journal of Laws of 2018, item 1987), hereinafter referred to as the "CCP". On the other hand, the Commander of the Capital City of Police, in response from [...] September 2015, provided photocopies of the witness's medical leaves and his correspondence address. This action cannot be considered compliant with the provisions of the Act on the Protection of Personal Data, despite the reference by KSP to the content of Art. 15 § 2 of the CCP. According to its content, the authorities provide assistance to conduct the proceedings within the time limit specified by the court. However, pursuant to Art. 15 § 1 of the Code of Criminal Procedure, the Police and other bodies in the scope of criminal proceedings execute the orders of the court, the court referendary and the public prosecutor, and conduct investigations or investigations under the supervision of the public prosecutor within the limits specified in the Act. The authority obliged to forward the summons to appear for a hearing in accordance with Art. 134 § 1 of the Code of Criminal Procedure (substitute service), transfer his obligation to the court. It is also incorrect to assume that any data may be provided for direct contact of the authority with a witness, or any other data for which the court has not asked directly.

It should be noted that pursuant to Art. 18 of the Act on the Protection of Personal Data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the lawful state only if he finds that there has been a breach of its provisions. It follows, therefore, that the authority may order the removal of deficiencies by ordering the disclosure of the requested data only after prior assessment of the behavior of the data controller who previously unjustly refused to provide them or remained inactive despite requests addressed to him. Therefore, the role of the authority is to examine whether the controller of personal data addressed with the request for disclosure of data properly responded to it. It is the personal data administrator (in this case the Warsaw Commander of the Police) who is obliged to examine whether there are legal grounds for taking action resulting in the disclosure of personal data, and the President of the Personal Data Protection Office to control this process. The disclosure of personal data in the public entity - court relationship, as is the case in the present case, may take place in cases provided for

by law. Therefore, other conditions may not apply, except for those indicated in Art. 23 sec. 1 point 2 of the Act, when it is necessary to exercise the right or fulfill the obligation resulting from the provisions of law, and in relation to "sensitive data", the premises under Art. 27 sec. 2 of the Act.

In the present case, there was a breach of the provisions on the protection of personal data by providing the Complainant's personal data without a court summons, however, due to the irreversibility of this situation, the authority for the protection of personal data has no grounds to issue a decision ordering the restoration of the lawful state, in the light of Art. 18 sec. 1 of the act.

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 file 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 Office (address: ul. Stawki 2, 00-193 Warsaw). The party has the right to apply for the right to assistance, including exemption from court costs.

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