THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

January

2019

DECISION

ZSZZS.440.310.2018

DECISION

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), art. 6 sec. 1 lit. c and art. 9 sec. 2 lit. h and i 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 (Official Journal Of the European Union, L 119, May 4, 2016), and art. 18 sec. 1 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 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000), after conducting administrative proceedings regarding the complaint of Ms M.O. and Mr. K.O. to share their personal data and the personal data of their underage children: J.O., J.O. and A. O. by Niepubliczny Zakład Opieki Zdrowotnej with headquarters in T. for the State County Sanitary Inspector in T., President of the Office for Personal Data Protection

orders the State Poviat Sanitary Inspector in T. to delete the personal data of Ms M.O. in terms of her telephone number;

as to the remainder, it refuses to accept the application.

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Ms M.O. and Mr. K.O., to provide their personal data in the field of first names, surnames, PESEL numbers and in the scope of telephone number and address of residence of Mrs. M.O., and personal data of their minor children: J.O., J.O. and A.O. in terms of first names, surnames, PESEL numbers, dates of birth, address of residence and information about the failure to comply with the vaccination obligation towards them, hereinafter referred to as: the Complainants, by the Private Healthcare Institution based in T., hereinafter referred to as: the Outpatient Clinic, for the State Poviat Sanitary Inspector in T., hereinafter referred to as PPIS.

In the content of the complaint, the complainants indicated that the Clinic provided PPIS with their personal data without their consent. In the complaint, the complainants indicated that they expected the Inspector General to issue a decision on the matter in question, restoring the condition prior to the disclosure of data; ordering the removal of any data concerning them from the PPIS data files; prohibiting the processing of their data by the PPIS and imposing penalties on the clinic and PPIS.

In the course of administrative proceedings, the President of the Personal Data Protection Office established the following facts:

The applicants, as persons in charge of their minor children, did not comply with the obligation to vaccinate them.

Due to the failure by the Complainants to fulfill the obligation to vaccinate their minor children, the Clinic provided their personal data to the County State Sanitary Inspector at T. The scope of the data provided included: names, surnames, PESEL numbers of Mr. K.O. and Mrs. M.O. and the telephone number and address of Ms M.O. In addition, the data of juvenile J.O., J.O. and A.O. in the scope of first names, surnames, PESEL numbers, dates of birth, address of residence and information on non-compliance with the vaccination obligation.

PPIS in explanations from [...]. indicated that the Complainants' data in the field of personal data provided by the Outpatient Clinic and the address of residence of Mr. K.O. are processed in connection with the need to enforce the Complainants' obligation to vaccinate their minor children.

The clinic indicated that it had disclosed the applicants' data.

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

First of all, it should be noted 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), hereinafter: the Act of 2018, i.e. 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, 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 with as amended), hereinafter referred to as the 1997 Act, in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), hereinafter referred to as: kpa All activities undertaken by the Inspector General before May 25, 2018 remain effective.

It is necessary to emphasize that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to settle the case based on the actual state of affairs at the time of issuing this decision. As argued in the doctrine, "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 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., El / 2012). At the same time, this authority shares the position expressed by the Supreme Administrative Court in the judgment of 25 November 2013, issued in the case no. act I OPS 6/1, in which the above-mentioned The court indicated the following: "In administrative proceedings governed by the provisions of the Code of Administrative Procedure, the rule is that the public administration body settles the matter by issuing a decision that resolves the matter as to its essence, according to the legal and factual status as at the date of issuing the decision."

The President of the Personal Data Protection Office must assess whether the questioned process of personal data processing as at the date of the administrative decision is lawful. Referring the above to the established facts, it should be emphasized that two circumstances are decisive for the decision that must be issued in the present case. First of all, it should be noted that the disclosure of the personal data of the Complainants and their minor children was a one-off and accomplished event, which took place during the period when the 1997 Act was in force, and therefore the provisions of this Act are applicable to the assessment of the lawfulness of this situation. Secondly, it should be pointed out that the personal data provided are still processed by the PPIS, therefore the provisions in force at the time of issuing the decision of the case, i.e. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, apply here. on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the repeal of Directive 95/46 / EC (Official Journal of the European Union, L 119, 4 May 2016), hereinafter: GDPR.

When referring to the disclosure of data, it should first be pointed out that any form of personal data processing, the so-called "Ordinary" should have found support in one of the enumerated in Art. 23 sec. 1 of the Act of 1997, the prerequisites for the

legality of this process. However, the processing of personal data, the so-called "Sensitive", the exhaustive catalog of which was defined by Art. 27 sec. 1 of the 1997 Act, it should have been based on one of the premises listed in Art. 27 sec. 2 of the Act of 1997. The conditions for the legality of personal data processing are exhaustively listed in the above-mentioned provisions. Each of them was autonomous and independent. This means that these conditions were equal, and the fulfillment of at least one of them constituted the lawful processing of personal data. It should be noted that, irrespective of the consent of the data subject, the processing of his personal data was permissible, inter alia, when it was necessary to exercise the right or fulfill an obligation resulting from a legal provision in the case of ordinary data processing (Article 23 (1) point 2 of the 1997 Act). In the case of sensitive data, the processing of personal data without the consent of the data subject was allowed, inter alia, in the event that a special provision of another act allowed for the processing of such data without the consent of the data subject and created full guarantees of their protection (Article 27 (2) (2) of the Act of 1997).

Pursuant to Art. 5 sec. 1 point 1 point b of the Act of December 5, 2008 on promoting and combating infection and infectious diseases in humans (Journal of Laws 2008 No. 234 item 1570), hereinafter referred to as: in this act to undergo preventive vaccinations. In the case of a person without full legal capacity, the responsibility for the fulfillment of this obligation is borne by the person who exercises legal custody or actual care of a minor or helpless person, in accordance with art. 3 sec. 1 point 1 of the Act of November 6, 2008 on the Rights of the Patient and the Patient's Rights Ombudsman (Journal of Laws of 2017, item 1318, as amended). Moreover, Art. 5 sec. 1 point 4 of the Act on obliges persons staying on the territory of the Republic of Poland to provide personal data and information, inter alia, to the bodies of the State Sanitary Inspection, which are necessary for epidemiological supervision over infections and infectious diseases, prevention and combating infections and infectious diseases, as well as information necessary to fulfill the obligations set out in Art. 5 sec. 1 point 1-3 of the Act

Pursuant to Art. 17 sec. 8 z.z. persons carrying out preventive vaccinations keep medical records on compulsory vaccinations, keep immunization cards, make entries confirming vaccination, draw up reports on the vaccination status and prepare reports on the vaccination status of persons covered by preventive health care, which are forwarded to the relevant State County Sanitary Inspector. Article 17 (1) 10 z.z. indicates that the report template is specified in the Regulation of the Minister of Health of 18 August 2011 on compulsory preventive vaccinations (i.e. Journal of Laws of 2018, item 753), hereinafter referred to as: roso, which requires a list of people who have not avoided from preventive vaccinations (Annex 4, second section roso). It should be emphasized that the above-mentioned regulation concerns technical and organizational issues allowing to

systematize the circulation of the documents described in it.

In the case in question, it is important to define the scope of personal data provided by the Clinic for PPIS. As it has been shown, in accordance with the applicable law, the Clinic is obliged to prepare a report on the preventive vaccinations carried out and to prepare a list of names of people who avoid immunization, to enable the State Sanitary Inspection to supervise the fulfillment of this obligation and its effective execution. It should be pointed out that compliance with the statutory obligation to undergo protective vaccinations against infectious diseases resulting from Art. 5 sec. 1 point 1 point b of the Uzz, as well as the provision of information on its implementation, was secured by administrative coercion (also: Provincial Administrative Court in Kielce, judgment of February 21, 2013, issued in the case No. II SA / Ke 7/13) . According to Art. 3 § 1 in connection with joke. 2 §1 point 10 of the Act of June 17, 1966 on enforcement proceedings in administration (Journal of Laws of 2014, item 1619, as amended), hereinafter: u.p.e.a. or the Act on Enforcement Proceedings, administrative enforcement shall apply to non-pecuniary obligations remaining within the competence of government administration and local government bodies or submitted for administrative enforcement on the basis of a special provision. Within the meaning of Art. 1a point 13 u.p.e.a. the creditor is the entity entitled to demand the performance of the obligation or its security in administrative enforcement or security proceedings (here: PPIS), while in accordance with Art. 5 §1 point 2 u.p.e.a. entitled to request the performance by way of administrative enforcement of the obligation specified in art. 2 §1 point 10 of the Act on there is a body or institution directly interested in the performance of the obligated obligation or appointed to supervise the performance of the obligation (see also the judgment of the Supreme Administrative Court of June 12, 2014, issued in the case No. II OSK 1312/13; judgment of the Provincial Administrative Court) in Bydgoszcz of June 9, 2015 issued in the case with reference number II SA / Bd 423/15). Therefore, it should be considered that the report drawn up pursuant to Art. 17 sec. 8 point 2 of the Act on should contain the data necessary for the appropriate branch of the State Sanitary Inspection to send a reminder to comply with the vaccination obligation and to take further enforcement actions in the event of failure to fulfill the obligation. It should be emphasized that the data obtained by the PPIS and made available to it must also be sufficient to effectively enforce the vaccination obligation, under which the creditor (here: PPIS) draws up an enforcement title. The scope of these data is governed by Art. 27 of the Act on Enforcement Proceedings. Pursuant to Art. 27 § 1 point 2 and 3 of the Act on enforcement, the writ of execution should include the name, surname, address, PESEL number of the person liable and the content of the obligation to be enforced.

In connection with the above, it should be stated that the Complainants' personal data in the field of first names, surnames, PESEL numbers, dates of birth of minors and the address of residence of minors and the complainant were made available by the Clinic for PPIS pursuant to Art. 23 sec. 1 point 2 of the Act of August 29, 1997, and the data of their minor children in terms of information on vaccinations not performed pursuant to Art. 27 sec. 2 point 2 of the Act of August 29, 1997, which in both cases should be again considered adequate and expedient in the light of the supervisory obligation performed by the PPIS. Nevertheless, personal data in the form of a telephone number to the complainant are not necessary to be provided in the report, in accordance with the scope of data required to issue an effective enforcement order. Thus, it should be considered that the complainant's personal data with regard to the telephone number was disclosed contrary to the provisions of the Act of 1997 due to the lack of necessity to process such personal data by PPIS in order to perform its statutory tasks. In addition, the provision of personal data unnecessary to achieve the statutory purpose should be considered inadequate and factually incorrect, and thus contrary to Art. 26 sec. 1 point 3 of the Act of 1997, which imposes an obligation on the data controller to ensure the factual correctness and adequacy of data in relation to the purposes of their processing. In this context, adequacy is defined by the recognition that "the type and content of the data should not exceed the needs resulting from the purpose of their collection. (...) the requirement [this] also precludes the collection of all data for (...) irrelevant, irrelevant data, and data with a "greater - than justified for this reason - degree of detail" (Barta, Janusz, Fajgielski, Paweł and Markiewicz , Ryszard. Art. 26. In: Protection of personal data. Commentary, VI edition. LEX, 2015.). In view of the above, it should be considered that the Clinic did not have a legal basis allowing for the disclosure of the complainant's telephone numbers to PPIS, and what is more, in accordance with the applicable regulations on administrative enforcement, this data was unnecessary for the effective enforcement of the vaccination obligation and should not be processed by PPIS . In view of the above, the President of the Office decided to order the Complainant's personal data to be deleted by the PPIS in this respect.

However, referring to the ongoing process of processing the Complainants' data by the PPIS, it should be noted that the GDPR defines the obligations of the data controller, including the processing of personal data, in accordance with the conditions set out in the Regulation. Art. 6 sec. 1 of the GDPR, according to which data processing is allowed only if one of the conditions set out in this provision is met. The catalog of the premises listed in Art. 6 sec. 1 GDPR is closed. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are, in principle, equal, and therefore the fulfillment of at least one of them determines the lawful processing of personal data. As a consequence, the

consent of the data subject is not the only basis for the processing of personal data, as the data processing process will be consistent with the Regulation also when the data controller demonstrates that another of the above-mentioned conditions is met. Regardless of the consent of the data subject (Article 6 (1) (a) of the GDPR), the processing of personal data is permitted, inter alia, when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (c) of the GDPR) GDPR). Pursuant to Article 5 para. 3 of the PIS Act, the competences of the PPIS include determining the scope and dates of compulsory preventive vaccinations and supervising the enforceability of the obligation to perform preventive vaccinations, which meets the requirement of Art. 6 sec. 1 lit. c GDPR.

Due to the special category of data (so-called "sensitive" data) processed in the case at hand, Art. 9 of the GDPR, which enumerates the situations in which such data may be processed. Pursuant to Art. 9 GDPR, the processing of sensitive data is only allowed if one of the conditions of Art. 9 sec. 2 GDPR. As possible prerequisites for processing, this provision mentions, inter alia, the processing of data for the purposes of preventive health care (...) on the basis of EU law or the law of a Member State, subject to paragraph 3 (h) as well as processing necessary for reasons of public interest in the field of public health on the basis of European Union or Member State law (letter i). In the present case, both Art. 9 sec. 2 lit h, in connection with the prophylactic use of vaccines, and art. 9 sec. 2 lit. and in view of the public interest in preventing infectious disease epidemics. Both of these grounds presuppose the existence of a legal basis in the form of a regulation at the level of the European Union or adopted by a Member State of the European Union. In the Republic of Poland, such provisions are contained in the Act on encouraging and combating infections and infectious diseases in humans.

According to the above analysis, Art. 17 sec. 8 point 2 of the Act on should be considered as a provision allowing for the acquisition of sensitive personal data by PPIS (i.e. information on immunization of the applicants' minor children). In addition, the legislator provided for the powers to obtain information about persons in order to enable effective supervision over the implementation of the obligation to vaccinate, in accordance with Art. 5 sec. 1 point 1 lit. b u.z.z. in connection with joke. 3 sec. 1 u.p.e.a. The above means that the processing of personal data by PPIS in the scope of information about undergoing protective vaccinations is based on the premises specified in Art. 9 sec. 2 lit. h and i GDPR. In addition, as indicated above, the processing by PPIS of ordinary data necessary for effective administrative enforcement and to fulfill the obligation incumbent on PIS in accordance with Art. 5 sec. 3 of the PIS Act is based on Art. 6 sec. 1 lit. c GDPR.

It should be noted here that the administrative procedure conducted by the President of the Office serves to control the

compliance of data processing with the provisions on the protection of personal data and is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act.As it follows from the wording of the quoted provision, in the event of a breach of the provisions of the Act, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders restoration of the legal status, and in particular removal of the deficiencies (point 1) , supplementing, updating, rectifying, disclosing or not providing personal data (point 2), applying additional security measures for the collected personal data (point 3), suspending the transfer of personal data to a third country (point 4), securing data or transferring it to other entities (point 5), deletion of personal data (point 6).

Referring to the above-mentioned requests of the Complainants, mentioned in the letter in question of [...] December 2018, it should be noted that, in the light of the above considerations, both the disclosure of the Complainants' data by the Clinic and their processing by the PPIS are based on the applicable provisions (i.e. Art. 5 (1) (1-3) of the Act, Art. 17 (8) (2) together with Art. 23 (1) of the 1997 Act, Art. 27 (1) and (2) of the 1997 Act and Article 6 (1) (c) of the GDPR and Article 9 (2) (h and) of the GDPR), therefore, complying with the complainants' requests should be considered groundless.

In this factual and legal state, the President of the Personal Data Protection Office adjudicated 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. 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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