

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 02

July

2019

DECISION

ZSOŚS.440.136.2018

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) and Art. 12 point 2, art. 22 and art. 23 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. 100 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) after administrative proceedings regarding the complaint of Mr. WB (correspondence address: [...]) for the disclosure by subordinate to the Poviats Police Commander in G. officers of the Poviats Police Headquarters in G. (based in G., at ul. [...]) his personal data for the benefit of unauthorized persons and inconsistent with the provisions on data protection personal processing of his personal data by the head of the commune of G., employees of the communication department of the Poviats Starosty in G. and the councilor of the GSP commune,

I refuse to accept the application

Justification

On [...] February 2013, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr WB, correspondence address: [...] officers of the Poviats Police Headquarters in G. (based in G., at [...] street) his personal data to unauthorized persons.

In connection with the above, the Complainant asked the Inspector General to intervene in order to immediately remove irregularities related to the disclosure by the subordinates of the Poviats Police Commander in G. to the officers of the Poviats Police Headquarters in G. for the benefit of unauthorized persons and inconsistent with the provisions on protection of personal data of the processing of his personal data by the head of the commune of G., employees of the communication department of the Poviats Starosty in G. and the councilor of the commune of G., SP

In the course of the proceedings initiated by the complaint, the Inspector General for Personal Data Protection obtained

explanations regarding the circumstances of the case, read the evidence and made the following findings.

By letters of [...] May 2013, the Inspector General for Personal Data Protection informed the Complainant about the initiation of explanatory proceedings in the case and asked the County Police Commander in G., hereinafter referred to as the "Commander", to comment on the content of the complaint and submit written explanations. On [...] June 2013, the Office of the Inspector General for Personal Data Protection received a letter from the Commander ([...]) explaining that [...] tree felling and shrubs on the plot in the town of S., in the commune of G. The reporting person also provided the registration number of the vehicle with which the man felling the trees arrived. In order to determine the owner of the above-mentioned of the vehicle, the guards went to the Poviát Police Headquarters in G., where the duty officer found the owner of the vehicle in the CEPiK database, who turned out to be the applicant. The commandant also explained that after the above-mentioned activities, case files were submitted, in accordance with the jurisdiction, to the Department of Municipal Economy and Environmental Protection of the Gmina Office G. 23 sec. 1 point 2 of the Act of August 29, 1997 on the protection of personal data, according to which data processing is allowed, inter alia, when it is necessary to exercise rights or fulfill an obligation resulting from a legal provision. The commander also explained that the scope of the commune guards' tasks was defined in the act of August 29, 1997 on commune guards, and in accordance with Art. 10 of the Act, the tasks of municipal guards include the performance of tasks related to the protection of public order, resulting from the acts and acts of local law. Pursuant to Art. 12 sec. 1 point 9 of the above-mentioned of the Act, the municipal guard is entitled to request emergency assistance from economic units and each person for ad hoc assistance on the terms specified in the Act on the Police. Responding to the letter of the Inspector General, the Commander informed that in the proceedings regarding the request for disclosure of personal data from the CEPiK database, the administrator of which is the Minister of the Interior and Administration, and not the Police, there was a violation of service discipline by the duty service of the Poviát Police Headquarters in G., and this offense consisted in the incorrect method of disclosing the complainant's personal data to the Municipal Guard in G.

Bearing in mind the above explanations, the Inspector General for Personal Data Protection, in a letter of [...] June 2013, asked the Head of the Gmina G. (hereinafter referred to as: "Head of the commune") to respond to the content of the complaint and to submit written explanations. On [...] July 2013, the Office of the Inspector General for Personal Data Protection received a letter from the Head of the Commune, in which he explained that [...] on September 2011 at 10:15 the Commune Guard received a notification from the property owner concerning the felling of trees and shrubs from the plot owned by the applicant.

The information contains the registration number of the vehicle of the person performing the cutting. After talking to the aggrieved owner of the property from which trees and bushes had been cut, a request was made to the District Police Headquarters in G. with a request to identify the owner of the car indicated by the aggrieved party. In the submitted explanations, the Head of the Commune indicated that the legal basis for the above actions was the Act of August 29, 1997 on the Protection of Personal Data and the agreement concluded on [...] April 2010 between the Poviát Police Commander in G. and the Head of the Commune of G. The commune administrator also explained that the data of the perpetrator of the cuttings were entered in the register of interventions of the municipal guard, and the guards were authorized to process the above-mentioned personal data provided by the Head of the Commune G. The commune administrator also indicated that the Complainant's personal data in the form of the first name, surname and address of residence had been obtained, and this information had been provided in accordance with the competence to the Department of Municipal Economy and Environmental Protection of the G. Commune Office, the commune head clearly indicated that at the moment, the G. Commune Office does not process the complainant's personal data due to the fact that the Department of Communal Economy and Environmental Protection of the G. Commune Office, which conducts explanatory proceedings regarding the notified felling of trees and shrubs on plot no. [...] in the town of S. carried out by the Complainant, determined that the removed trees did not require a permit to be removed from the property, pursuant to Art. 83 sec. 1 of the Act of April 16, 2004 on nature protection (Journal of Laws of 2018, item 1614).

Moreover, in the supplementary explanations (ref. Mark: [...]), the commune administrator informed that the Commune Guard was acting on the basis of Art. 54 and art. 17 § 3 of the Act of August 24, 2001 - Code of Conduct in Petty Offenses (Journal of Laws 2018, item 475) in connection with Art. 11 and 12 of the Act of August 29, 1997 on municipal guards (Journal of Laws 2018, item 928). At the same time, he pointed out that the Municipal Guard was entitled to process personal data pursuant to Art. 10a of the Act on Municipal Guards, according to which, in order to perform statutory tasks, the guard may process personal data, with the exception of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, religious, party or trade union affiliation, as well as data on the state health, genetic code, addictions or sexual life, without the knowledge and consent of the data subject, obtained as a result of actions taken in proceedings in misdemeanor cases; from registers, records and files to which the fire brigade has access on the basis of separate regulations.

In view of the disclosed circumstances, the Inspector General, in a letter of [...] August 2013, asked the Poviát Police

Commander in G. for additional explanations regarding the disclosure of the complainant's data by officers of the Poviats Police Headquarters in G. for the benefit of the Commune Guard officers in G .

In a letter of [...] August 2013 (date of receipt: [...] August 2013, ref. [...]), the Commandant explained that in the conducted explanatory proceedings it was found that there had been a breach of professional discipline by the duty service of the District Police Headquarters in G., consisting in the incorrect method of disclosing the Complainant's personal data, i.e. the lack of a written, motivated request for the data in question, indicating the scope of the requested data and indicating their purpose. Moreover, the Commandant indicated that, in order to prevent the occurrence of similar irregularities, training was conducted in the field of disclosing and processing personal data in accordance with the Act of August 29, 1997 on the Protection of Personal Data. At the same time, the Commandant explained that due to the lapse of time from the moment of committing a disciplinary offense, pursuant to Art. 135 of the Act of 6 April 1990 on the Police, it is not possible to initiate disciplinary proceedings and take disciplinary consequences.

In a letter of [...] August 2013, the complainant extended the complaint lodged on [...] February 2013 and asked for a determination of the lawfulness of the processing of his personal data by the quotation: "the commune head G., the manager of that commune S. a councilor in the commune of P., their friend, a policeman and employees of the communication department in G. ".

Therefore, acting pursuant to Art. 14 point 2 of the Act of August 29, 1997, the Inspector General for Personal Data Protection turned to the County Police Commander in G., the City Mayor G. and the Starost G. to submit written explanations.

In a letter of [...] October 2013 (date of receipt: [...] November 2013), Starost G. explained that the employees of the Communications Department of the Poviats Starosty in G. had not disclosed the complainant's personal data. Moreover, in a letter of [...] November 2013, the Head of the Commune G. maintained the previously sent explanations. In a letter of [...] November 2013 (date of receipt: [...] November 2013), the District Police Commander in G. stated that all the issues raised had already been comprehensively explained in the letters from [...] June 2013 and in a letter of [...] August 2013.

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, on May 25, 2018, the Office of the Inspector General for Personal Data Protection became 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 on the

basis of the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Criminal Code. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective. At the same time, the case is currently being conducted by the Team for Law Enforcement and Courts and has been given the reference number [...].

In response to the letter of the President of the Personal Data Protection Office of [...] March 2019, the Poviast Starost in G. explained that the complainant's personal data are protected against unauthorized access in accordance with the Personal Data Protection Act, i.e. paper and computer data are secured in closed, monitored rooms to which only employees have access. The Staroste also explained that, in view of the circumstances indicated by the Complainant, an explanatory proceeding was conducted which showed that the employees did not disclose the Complainant's personal data to Ms S. P. and other persons indicated in the complaint.

The President of the Office for Personal Data Protection informed the parties in letters of [...] May 2019 that the administrative procedure was conducted, as a result of which evidence was collected sufficient to issue an administrative decision and that it was possible to comment on the evidence and materials collected and the requests submitted 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.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

The above-mentioned Act on the Protection of Personal Data of August 29, 1997 provides legal grounds for applying state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, assessing the status of the case and subsuming, determines whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in art. 23 sec. 1 above of the Act on the Protection of Personal Data and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuance of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing. Pursuant to Art. 1 of the aforementioned Act, everyone has the right to the protection of personal data concerning him, and the

processing of such data, in the sense referred to in Art. 7 point 2 of this act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time.

The right to the protection of personal data, as one of the elements of the right to the protection of a person's privacy, has its source in the provisions of the Act of April 2, 1997, the Constitution of the Republic of Poland. According to the Basic Law, everyone has the right, inter alia, to the legal protection of private and family life, honor and good name (Article 47 of the Constitution), and disclosure of information about a person is specified by statute (Article 51 (5) of the Constitution). The instruction of Art. 51 sec. 5 of the Constitution is fulfilled by the Personal Data Protection Act, which defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Personal Data Protection Act of August 29, 1997 r.).

In this case, the content of Art. 23 sec. 1 of the Act on the Protection of Personal Data, which in points 1 to 5 specifies the material conditions for the processing of personal data, indicating, inter alia, in the wording of Art. 23 sec. 1 point 2, that data processing is allowed only when it is necessary to exercise the right or fulfill the obligation resulting from the law and in the content of art. 23 sec. 1 point 4 that the processing of personal data is possible when it is necessary for the performance of tasks defined by law for the public good.

At the same time, it should be pointed out that the municipal guard performs tasks defined by law, which it carries out for the public good. Pursuant to Art. 6 sec. 1 of the Act on commune guards, the communal (city) guard is an organizational unit of a commune and pursuant to Art. 10 sec. 1 of the Act on Municipal Guards performs tasks in the field of the protection of public order resulting from the acts and acts of local law. Moreover, the provision of Art. 10a (1) of the Act on Municipal Guards provides that the guard, in order to perform statutory tasks, may process personal data, with the exception of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, religious, party or trade union affiliation, as well as data on the state of health, genetic code, addictions or sexual life, without the knowledge and consent of the data subject, obtained as a result of actions taken in proceedings in misdemeanor cases. This regulation strictly corresponds to Art. 10, art. 11 and art. 12 of the Act on Municipal Guards. In accordance with the content of Art. 10 sec. 1, the municipal guard performs tasks in the field of the protection of public order, which are provided for in the provisions of the statutory rank and acts of local law.

The decisive factor in the present case is the fact that, according to the explanations of the commune administrator, at present the G. Commune Office does not process the complainant's personal data due to the fact that the Municipal Economy and Environmental Protection Department of the G. Commune Office, conducting the explanatory proceedings on the reported case felling of trees and shrubs on plot no. [...] in the town of S., performed by the Complainant, determined that the removed trees did not require a permit to be removed from the property, pursuant to Art. 83 sec. 1 of the Act of April 16, 2004 on nature protection (Journal of Laws of 2018, item 1614). Moreover, it should be noted that the Poviast Staroste in G. explained that the employees of the Communication Department of the Poviast Starosty in G. did not disclose the complainant's personal data to Mrs. SP, and the complainant's personal data are protected against unauthorized access in accordance with the Personal Data Protection Act, i.e. paper and computer files are secured in closed, monitored rooms, to which only employees have access. The staroste also explained that, in view of the circumstances indicated by the complainant, an explanatory procedure had been conducted which showed that the employees did not disclose the complainant's personal data to Ms S. P. and other persons indicated in the complaint.

As regards the explanations provided by the Poviast Police Commander, it should be noted that the Commander explained that in the conducted explanatory proceedings it was found that there was a violation of official discipline by the duty service of the Poviast Police Headquarters in G., consisting in an incorrect method of disclosing the complainant's personal data, i.e. the lack of a written, motivated request for the data in question, together with an indication of the scope of the requested data and an indication of their purpose. Moreover, the Commandant indicated that, in order to prevent the occurrence of similar irregularities, training was conducted in the field of disclosing and processing personal data in accordance with the Act of August 29, 1997 on the Protection of Personal Data. At the same time, the Commandant explained that due to the lapse of time from the moment of committing a disciplinary offense, pursuant to Art. 135 of the Act of April 6, 1990 on the Police, it is not possible to initiate disciplinary proceedings and take disciplinary consequences.

According to the evidence collected in the case, the disclosure of the Complainant's personal data took place pursuant to Art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the protection of personal data in connection with joke. 12 sec. 1 point 9, art. 10 and art. 20 of the Act of August 29, 1997 on Municipal Guards. This disclosure, however, took place without the form required by law, i.e. the lack of a written, motivated request for disclosure of the personal data in question, together with an indication of the scope of the requested data and an indication of their purpose. However, due to the fact that the disclosure of

the Complainant's personal data without the legally required form was incidental and the fact that measures have already been taken to eliminate such deficiencies, it is pointless to issue a decision ordering the restoration of the lawful state. Moreover, the President of the Office is not authorized to issue an order regarding possible unauthorized processing of the Complainant's personal data in the future. It should be emphasized that an administrative decision is a specific and individual act and always concerns a strictly defined, established and current state of affairs at the time of the ruling. The President of the Office is not authorized to issue a decision with regard to future and often hypothetical situations.

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

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), in connection with art. 15 of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), this decision of the parties has the right to lodge a complaint with the Provincial Administrative Court, within 30 days from the date of delivery to her side. 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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