

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 11

June

2019

DECISION

ZSZZS.440.592.2018

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (i.e. Journal of Laws of 2018, item 2096) and art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (i.e. Journal of Laws of 2016, item 922) 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) and in connection with Reg. 5 sec. 1 lit. c and e 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 U.UE.L.2016.119.1), after conducting administrative proceedings regarding the complaint of Ms MS, for disclosure by Primary School No. [...] in W. at the meetings of the teaching council on [...] and [...] June 2015. the complainant's personal data regarding the evaluation of the teacher's work and to make available on the website of the Public Information Bulletin of the Board of Education in W. the personal data of the complainant contained in the ordinance no. from the agreed evaluation of the teacher's work, Mrs. MS, President of the Office for Personal Data Protection

orders [...] the Superintendent of Education with its seat in W. to delete the complainant's personal data with regard to the name and surname from the order no. [...] of the Education Superintendent of [...] June 2015, available on the website of the Public Information Bulletin of the Board of Education in W. ;

as to the remainder, it refuses to grant the request.

Justification

The Office of the Inspector General for Personal Data Protection (now the Office for Personal Data Protection) received a complaint from Ms MS, hereinafter referred to as the Complainant, against the provision by Primary School No. [...] in W., hereinafter referred to as the School, at meetings of the pedagogical council on [...] and [...] June 2015, the complainant's personal data on the evaluation of the teacher's work and to make available on the website of the Public Information Bulletin of

the Board of Education in W. the personal data of the complainant contained in the ordinance no. on the appointment of an evaluation team to consider an appeal against the determined evaluation of the teacher's work by Mrs. MS. The complainant requested that the School, in the event of confirmation of violation of the provisions on the protection of personal data, remedy the deficiencies, i.e. remove the possibility of identifying her person with the evaluation of the work "good" from the protocol pedagogical council, rectification by the school headmaster, application of additional security measures that have collected personal data (causing employees to train in order to prevent repetition of such situations) and data protection. Moreover, if it was found that someone's action was a crime defined in the Personal Data Protection Act, she applied for a notification of the commission of the crime to be sent to the body appointed to prosecute crimes. In subsequent letters supplementing the complaint, the complainant also requested the removal of her personal data or their anonymization in the Order No. [...] of the Education Superintendent of [...] June 2015 announced in the Public Information Bulletin.

In the course of the administrative proceedings, the President of the Personal Data Protection Office, hereinafter referred to as the President of the Office, established the following facts.

The applicant was employed as a teacher at the School.

On [...] June 2015, a meeting of the Pedagogical Council No. [...] was held in the School. At the meeting, the first item on the agenda was "Appeal against the assessment of the" performance evaluation "- a motion submitted by Ms M.S., a teacher [...]".

One of the members of the Pedagogical Council, Ms HH, was appointed to the commission in the evaluation team.

On [...] June 2015, on the website of the Public Information Bulletin of the Board of Education in W. there was published the Order of the Probation Officer No. [...] of [...] June 2015 on the appointment of an evaluation team to consider an appeal against the agreed evaluation of a teacher's performance Mrs. MS

At the next meeting of the Pedagogical Council (No. [...]), held on [...] June 2015 under the first item of the agenda, ie "Summary of the school's pedagogical supervision in the 2014/2015 school year", the school's director, Ms J.Z. indicated that in the 2014/2015 school year she made 8 observations of classes and 5 grades of work, of which four teachers received an distinguishing mark, and one teacher obtained a good mark. The headmaster added, quoting the content of the protocol, "the employee, without giving his name, appealed against the evaluation (good) to the board of trustees, and after the protocol comes from the Board of Education in W., he will read the result of the appeal committee meeting to the members of the Pedagogical Council". Then the applicant, citing the minutes, "filed a motion for infringement of personal rights. The director

asked for an explanation of what the application should concern. The teacher explained that it was her personal rights that had been violated because it was possible to identify the employee in question ”.

Having read the entirety of the evidence collected in this case, the President of the Personal Data Protection Office 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), 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 (i.e. Journal of Laws of 2016, item 922).) [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 (ie Journal of Laws of 2018, item 2096) [hereinafter referred to as the Administrative Procedure Code]. All activities undertaken by the Inspector General before May 25, 2018 remain effective.

In addition, 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., EI / 2012). Moreover, in the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07, the Supreme Administrative Court stated that “when examining [...] the legality of personal data processing, GIODO is obliged to determine whether, as at the date of issuing the decision in the case, the data of a specific entity are processed and whether it is done in a lawful manner ”.

In line with the above, the fact that the disclosure of the complainant's personal data during the meeting of the Pedagogical

Council was one-off and incidental, and is currently not continued, implies the need to apply in this respect the provisions in force at the time when the alleged irregularities in the processing of her personal data occurred. , i.e. the Act of 1997.

Assessment of the correctness of disclosure of the complainant's personal data on the website of the Public Information Bulletin should be based on the provisions of the Regulation of the European Parliament and of the Council (EU) 2016/679 of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free movement of such data and the repeal of Directive 95/46 / EC (Journal of Laws EU, L 119, May 4, 2016), hereinafter referred to as the GDPR, as the entry containing the above regulation is still available to the public. In both cases, however, it is necessary to consider the legal situation of the teacher as a person who performs public functions and the related limitation of the right to the protection of personal data.

The 1997 Act did not define or use the term "person discharging a public office". It did, however, define general rules for the processing and protection of personal data. Their application could be excluded, in specific cases, when it resulted from provisions specific to the act. The applicant is right in arguing that the teacher is not a public official. The teacher, in accordance with Art. 3 point 9 of the Act of 7 September 1991 on the Education System (i.e. Journal of Laws of 2018, item 1457), he is a teacher at a school, institution, teacher training institution and in-service training institution. Thus, in the opinion of this body, the teacher is a person performing a public function within the meaning of the Act of 6 September 2001 on access to public information (i.e. Journal of Laws of 2018, item 1330). The public function is a function related to the rights and obligations in the implementation of tasks of public importance, and such a task is, inter alia, implementing the constitutional right to education as part of the work performed by school teachers, which allows them to be qualified as persons performing public functions. The complainant, as a person employed in an organizational unit administering public funds, which does not perform service activities, but public tasks, fulfilling the basic goal of public education, resulting from the Constitution of the Republic of Poland and the Act on the education system, thus performed the tasks of a public official (see the judgment of the Supreme Administrative Court of April 10, 2015, file reference number I OSK 1108/14, LEX No. 1773500; judgment of the Provincial Administrative Court in Poznań of April 21, 2016, file reference number II SA / PO 157/16, LEX No. 2060626). The above means that the complainant's personal data are subject to limited protection.

The certified true copies of the minutes from the meetings of the Pedagogical Council, attached to the School's explanations, do not indicate any irregularities in the processing of the complainant's personal data by the School. Although the information

provided at the meeting of the Pedagogical Council on [...] June 2015, together with the information provided at the meeting on [...] June 2015, indicate that the teacher who appealed against the grade was the complainant, but no in connection with the violation of the provisions of the Act of 1997. The subject of the first meeting was, inter alia, selecting one of the members of the Pedagogical Council to be a member of the commission in the evaluation team. By letter of [...] June 2015, the school head was asked by the Education Office in W. to select a person - a representative of the Pedagogical Council - who would be part of the evaluation team in accordance with § 6 of the Regulation of the Minister of National Education of December 21, 2012 in on the criteria and procedure for evaluating the teacher's work, the appeal procedure and the composition and method of appointing the evaluation team (Journal of Laws of 2012, item 1538). According to the above-mentioned by way of a provision, the appeal against the teacher's performance appraisal shall be considered, subject to para. 4, within 30 days from the date of appeal, the evaluation team appointed by the pedagogical supervision authority, composed of: 1) a representative of the authority exercising pedagogical supervision over the school, as the chairman of the team; 2) a representative of the school's pedagogical council, subject to paragraph 2; 3) a representative of parents who are members of the school council, and in a school where the school council has not been appointed - a representative of the parents' council; 4) an appropriate methodological advisor; 5) a representative of the enterprise trade union indicated by the teacher. Therefore, putting this issue to a vote at the meeting of the Pedagogical Council does not raise any doubts of the authority. There were also no irregularities at the next meeting of the Pedagogical Council. At that time, the headmaster of the school disclosed only the information that in the 2014/2015 school year she had made eight observations of classes and five work assessments. Four teachers were distinguished and one teacher was rated good. She also added, without giving her name, that one employee appealed against the good grade. The director's conduct was correct and, in the opinion of the authority, it was based on the premise referred to in Art. 23 sec. 1 point 2 of the Act of 1997 as necessary to fulfill the obligation resulting from a legal provision (see the judgment of the Provincial Administrative Court in Kraków of 23 April 2013, ref. II SAB / Kr 31/13, LEX no. 1326070).

Pursuant to Art. 6a of the Teacher's Charter, the teacher's work is subject to evaluation. The procedure for assessing teachers and appealing against them is regulated in detail by law. It should be emphasized that the complainant's personal data disclosed during the meetings of the Pedagogical Council did not constitute data about her private life, but only about the teaching profession performed by the complainant. It should be added that, according to § [...] of the Regulations of the Pedagogical Council of Primary School No. the institution to its members, representatives of the body exercising pedagogical

supervision and the body in charge. Therefore, it is difficult to conclude that the knowledge about the assessment issued to the complainant and the appeal submitted against it, as a result of the disclosure of this information during the meeting of the Pedagogical Council, was obtained by any persons from outside the authority.

Summing up the considerations concerning the disclosure of the complainant's personal data at the meeting of the Pedagogical Council, it should be stated that there was no breach of the provisions of the Act of 1997. The processing of the complainant's personal data was carried out pursuant to Art. 23 sec. 1 point 2 of the Act of 1997, i.e. it was necessary for the School to fulfill its obligation under the law.

Referring to the issue of disclosing the complainant's personal data on the website of the Public Information Bulletin of the Board of Education in W., one should share the arguments presented by this entity in the submitted explanations. [...] The Education Superintendent, pursuant to Art. art. 8 sec. 3 of the Act of 6 September 2001 on access to public information (i.e. Journal of Laws of 2018, item 1330) is obliged to provide public information on its activities in the Public Information Bulletin. Regulations [...] of the Education Superintendent, as acts of internal law, constitute public information subject to disclosure. In the opinion of this authority, it was correct to disclose the order challenged by the complainant without anonymization. This action was also based on the premise of Art. 23 sec. 1 point 2 of the Act of 1997. Information on the evaluation of the teacher's work and the statutory activities of the school superintendent, implemented under the procedure of appealing against the evaluation of the teacher's work, constitutes public information. Thus, also personal data regarding the name, surname and place of work of the teachers mentioned therein should be made available to the public.

Regardless of these circumstances, however, it must be indicated that all forms of personal data processing must be carried out in accordance with the principles set out in art. 5 sec. 1 GDPR. Personal data should be processed for a clearly defined purpose, adequate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization"), and stored in a form that permits identification of the data subject for a period not longer than is necessary for the purposes for which the data are processed, and for a longer period - as long as they are processed solely for archiving purposes in the public interest, for scientific or historical research purposes or for statistical purposes pursuant to Art. 89 paragraph. 1 subject to the implementation of appropriate technical and organizational measures required by the GDPR to protect the rights and freedoms of data subjects ("storage limitation"). In this respect, the President of the Office shares the opinion that even if certain data correspond to the purpose for which they are collected and are adequate for that purpose, it

does not follow that they may be processed, including made available to other entities. The temporary determinant here is the achievement of the intended purpose of processing (also: J. Barta, P. Fajgielski, R. Markiewicz, Personal data protection, Comment, Kraków 2007, 4th edition, p. 510). In connection with the above, the data controller is obliged to consider the purposefulness and establish a period of sharing personal data and their immediate deletion after the expiry of the established period.

The purpose of the Public Information Bulletin is not to archive information, but to provide citizens with universal access to public information. The informative purpose becomes less relevant over time. There is no provision that would specify the time necessary to achieve the goal of publishing information in the bulletin, nevertheless, the order of [...] of the Education Superintendent was issued on [...] June 2015, which suggests that after such a long time this goal will already be came true. Moreover, attention should be paid to the selectivity of the information about the applicant published in the bulletin. It is still possible to obtain information on the appeal filed by the complainant against the evaluation of the work, but there is no information on how to end the proceedings on this subject. This may place the applicant in a negative light and suggest that the decision made could be unfavorable to her. Considering that the above data are no longer necessary for the purposes for which they are processed, the President of the Office ordered their removal pursuant to Art. 18 sec. 1 point 1 of the 1997 Act. At the end of these considerations, it should be clarified that the President of the Office for Personal Data Protection is the body authorized only to assess issues related to the processing of personal data. Ruling on the protection of personal rights and the commission of a crime remains outside the competence of the authority. If, in the opinion of the complainant, there was a breach of her personal rights, she has the right to pursue claims in this respect before a common court on general principles resulting from the Act of 23 April 1964 Civil Code (i.e. Journal of Laws of 2018, item 1025).), in accordance with the provisions of the Act of November 17, 1964, Code of Civil Procedure (i.e. Journal of Laws of 2018, item 1360). In relation to the request for the referral by the President of the Office of a notification about the possibility of committing a crime to the body appointed to prosecute crimes, it should be indicated that the subject of a party's request in the proceedings initiated by the President of the Personal Data Protection Office at its request may not be a request to take action before law enforcement authorities. . The Supreme Administrative Court spoke similarly in this matter, which in its judgment of November 19, 2001 (file reference number II SA 2702/00) stated that "a person seeking protection of his rights under the Act on the Protection of Personal Data is not the subject of the proceedings calculated to issue a decision notifying the relevant authority about a crime

in the scope of personal data processing and may not be demanded by GIODO in the administrative and legal forms of this proceeding. The provision of art. 19 does not give the party a claim in this respect. The performance of the obligation referred to in this provision is borne solely by GIODO. " Therefore, it should be pointed out that if, in the opinion of the complainant, a crime was committed, she may apply directly to the law enforcement authorities with an appropriate notification of the suspected crime.

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

Based on Article. 127 § of the Code of Civil Procedure from this decision, 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 an exemption from court costs or the right to assistance.

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