

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

of August

2019

DECISION

ZSOŚS.440.25.2019

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) in connection with joke. 7 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) and art. 57 sec. 1 lit. a and f and art. 6 sec. 1 lit. c of 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 (general regulation on the protection of data) (Journal of Laws UE L 119 of 04/05/2016, p. 1, with the amendment announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2) after conducting administrative proceedings regarding the complaint of Mr. PM ([...]) irregularities in the processing of his personal data by the Municipal Roads Authority in Warsaw represented by the Director, consisting in the collection and processing of personal data in the form of an image without his consent,

I refuse to accept the application

Justification

On [...] June 2018, the Personal Data Protection Office received a complaint from Mr. PM (hereinafter: the "Complainant") about irregularities in the processing of his personal data by the Municipal Roads Authority in Warsaw (hereinafter: "ZDM") consisting in the collection and processing of his personal data in the form of an image without prior consent in this regard. In the justification of the complaint, the complainant pointed out that [...] in June 2018, during a parking maneuver on the street [...] in W., the ZDM employee started taking pictures of him, instead of the vehicle in which he was traveling. In the complainant's opinion, his right to his image was violated by the employees of ZDM, who took pictures of him without his consent. In connection with the above, the Complainant asked the President of the Personal Data Protection Office to take steps to order the removal of all his personal data, in particular his image, unlawfully obtained by ZDM employees.

By letters of [...] November 2018, the President of the Personal Data Protection Office informed the Complainant and the

Director of ZDM about the initiation of the investigation procedure and asked the Director to comment on the complaint and provide written explanations. On [...] December 2018, the Office for Personal Data Protection received a letter from the Director of ZDM ([...]), in which he explained that ZDM charges a fee for parking vehicles on public roads in the Warsaw paid parking zone on the basis of the Act of March 21, 1985 on public roads (Journal of Laws of 2018, item 2068), in particular, he drew attention to Art. 13 sec. 1 point 1, art. 13b paragraph. 7, art. 13f paragraph. 1 and sec. 2 of this act. In addition, it indicated that in order to implement the provisions of the contract, it was adopted by Resolution No. [...] of the Warsaw City Council of [...] June 2008 on the determination of a paid parking zone, the amount of fees for parking vehicles on public roads in the zone, the amount of the additional fee and the method of charging these fees (Journal of Laws of the Province of Maz. No. 138, item 4868, as amended), which in Annex No. 2 - § 4 section 1 stipulates that the control of the compliance of the parking of motor vehicles is carried out by the administrator of the paid parking zone, ie the Municipal Roads Authority. The implementation of ZDM's rights requires the registration of vehicle stoppages without the payment receipt visible in the vehicle and the preparation of documentation enabling the effective collection of the additional fee, as well as subsequent consideration of complaints and appeals. The director emphasized that the photographic documentation made by ZDM inspectors is an important element of the above requirement. For evidence purposes, ZDM has photos of a car with a registration number, close-up of the windshield and dashboard, on which a control ticket should be displayed confirming payment of the parking fee in the unguarded paid parking zone. In the case of processing the image of the complainant, the complainant was in the vehicle when the ZDM employees were preparing the control documentation. In the opinion of the Director of ZDM, the Complainant was aware that the employees were starting to take photos because they had warned him about the need to document a stop in the paid parking zone, and yet he did not leave the vehicle. Employees were required to collect evidence in order to fulfill the statutory obligation to collect an additional fee for unpaid parking of a car, which is a public and legal obligation. At the same time, he stated that all photographs owned by ZDM were attached to the letter of [...] December 2018. The letter of the Complainant of [...] June 2018, together with the reply of ZDM from [...] .] July 2018, the controllers' official memo of [...] June 2018 and the additional fee document of [...] June 2018.

The complainant, in a letter of [...] June 2018 addressed to the Director of ZDM, requested that his personal data collected in connection with the above incident be deleted. In response, the Director of ZDM referred to Art. 13 sec. 1 point 1 and art. 13f paragraph. 1 of the Act of March 21, 1985 on public roads, as well as the above-mentioned resolution No. [...] of the Warsaw

City Council of [...] June 2008 and Appendix No. 2 of the Regulations for the functioning of the unguarded paid parking zone, in particular § 3 sec. 1. Moreover, the content of Art. 2 point 30 of the Act of 20 June 1997 - Road Traffic Law, which defines the vehicle's stoppage. Due to the fact that the Complainant did not purchase a parking ticket immediately after parking the vehicle and after being reminded by the ZDM inspector of such an obligation, the control documentation was carried out, including photos containing the image of the driver. As it results from the letter of [...] July 2018, the Head of the Parking Department, the complainant was also informed that the above-mentioned the documentation remains at the disposal of ZDM until the activities related to the collection of the additional fee are completed.

The President of the Office for Personal Data Protection informed the Complainant and the Director of ZDM in letters of [...] December 2018 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 submitted requests 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. After reviewing the material collected in the case, in a letter of [...] January 2019, the applicant requested a copy of the control ticket confirming the payment of the parking fee on [...] June 2018 and the obligation to submit to the files of the proceedings all photos of the Lexus vehicle taken by ZDM controllers and the film they have made, or making a statement that the photos submitted to the proceedings files constitute all the material at the disposal of ZDM in the case. Therefore, the President of the Office, in order to clarify the entirety of the facts of the case, again in a letter of [...] June 2019, asked the Director of ZDM to submit explanations regarding the recording of the film by the controllers while documenting the stoppage of the above-mentioned vehicle [...] June 2018. After the above-mentioned reply that the ZDM controllers did not record the film from the event that took place [...] in June 2018 (letter of [...] July 2019, in the case file), the President of the Office informed the parties again about the collection of evidence in the case and the possibility of reviewing the case files.

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

The evidence collected in the case at hand shows that when the ZDM employees perform activities consisting in verifying the Complainant's compliance with the obligation to pay fees for parking vehicles on public roads in the so-called in an unguarded paid parking zone on [...] street in W., the vehicle and the image of the applicant were recorded in the photos. In the Complainant's opinion, the processing of his personal data in the form of his image in connection with the event [...] of June

2018 is unlawful, therefore he demands their removal from the files of ZDM proceedings. In response, the Director of ZDM indicated that the inspectors are obliged to collect evidence by taking photographs, containing a view of the vehicle that allows to identify it by the registration number and determine the place where it was located in order to fulfill the statutory obligation of enforcing an additional fee for unpaid parking of the car which is a public and legal obligation.

In the present case, ZDM has photographs showing a motor vehicle with a registration number, a close-up of the windshield and the dashboard. Some photos also show a fragment of the applicant's figure, and in one of them a small part of his face, as it was covered by a mobile phone. In the opinion of the Director of ZDM, the Complainant was aware that the employees were starting to take photos because they had warned him about the need to document the vehicle's parking in the paid parking zone, and yet he did not leave the vehicle. Moreover, in view of the application submitted by the Complainant in a letter of [...] January 2019, the President of the Office established, on the basis of a letter of [...] December 2018, containing a declaration of the Director of ZDM that all photographs owned by ZDM were attached to in the present case, and moreover, that there was no recording during the documenting of the stoppage of the vehicle [...] in June 2018. The applicant also did not provide any evidence in this regard that could lead to different findings.

The aforementioned regulation on the protection of personal data creates the legal basis for the application of 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. 6 sec. 1 above of the general regulation on data protection and depending on the findings in the case - it either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuing 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. It should be emphasized that the legalizing conditions are, in principle, equal, and therefore meeting at least one of them already determines the lawful processing of personal data. It follows from the above that, for the legality of the processing of personal data, the consent of the data subject is not always required. This process may be based on another of the premises listed in Art. 6 sec. 1 above of the regulation than the consent of the data subject.

Pursuant to Art. 1 clause 2 of the above-mentioned regulation, it protects the fundamental rights and freedoms of natural persons, in particular their right to the protection of personal data, and the processing of such data, as referred to in Art. 4 point 2 of this regulation, must be carried out in accordance with the principles set out in this legal act, i.e. in accordance with the law, in a fair and transparent manner, for legitimate purposes and limited to what is necessary for these purposes, as well as ensuring adequate security of these data.

In this case, the content of Art. 6 sec. 1 lit. c of the General Data Protection Regulation, which states that data processing is permissible when it is necessary to fulfill the legal obligation incumbent on the controller. In this respect, the General Data Protection Regulation refers to provisions regulating in detail the activities of certain entities and institutions. The obligation to pay tolls for the use of public roads was specified in the provisions of the Act of March 21, 1985 on public roads (Journal of Laws of 2018, item 2068, as amended). Pursuant to Art. 13 sec. 1 point 1 of the above-mentioned of the Act, users of public roads are obliged to pay tolls for parking vehicles on public roads in the paid parking zone. Such a zone may be established by the commune council (city council), at the same time adopting the amount of the above-mentioned rates. fees and determine the method of their collection (Article 13b (3) and (4) points 1 and 3). In the event of failure to pay the fee for parking a motor vehicle in such a zone, an additional fee is collected, the amount and method of collection of which are also determined by the commune council (city council). In this case, the Council of the Capital City of Warsaw, on [...] June 2008, adopted Resolution No. [...] on the determination of the paid parking zone, the amount of rates for parking vehicles on public roads in the zone, the amount of the additional fee and determining the method of charging these fees (Journal of Laws of the Province of Mazovia No. 138, item 4868, as amended). The fee for both parking in the paid parking zone and the additional fee for failure to pay such a fee is collected by the road management, and in the absence of such a fee - the road manager (Article 13b (7) and Article 13f (3) of the Public Roads Act), which in the case of public roads located within the city limits with poviat rights, with the exception of motorways and expressways, there is the mayor of the city (Article 19 (5) of the Act on Public Roads), as is the case with the Capital City of Of Warsaw.

The legal basis for ZDM's operation is the resolution No. [...] of the Warsaw City Council of [...] May 2008 on the statute of the Municipal Roads Authority adopted pursuant to Art. 18 sec. 2 point 9 lit. h of the Act of March 8, 1990 on Municipal Self-Government (Journal of Laws of 2019, item 506), amended by Resolution No. [...] of [...] November 2010. In § 2 sec. 1 and sec. 4 of the Resolution No. [...] in the wording adopted by the Resolution No. [...] of November 9, 2010 (§ 1 point 3) it was

indicated that ZDM is an organizational unit of the Capital City of Of Warsaw without legal personality, operating in the form of a budgetary unit supervised by the President of the Capital City of Warsaw Of Warsaw. ZDM is the road board, with the help of which the President of the Capital City of Warsaw performs its duties as the administrator of national public roads with certain exceptions. The tasks of ZDM include, in particular, the performance of tasks related to the collection of tolls for parking vehicles on public roads and communal roads in the unguarded paid parking zone, including the control of parking fees and the collection of additional fees. The method of charging the additional fee is specified in § 4 of the regulations on the operation of the paid unguarded parking zone (Annex No. 2 to the Resolution No. [...] of the Council of the Capital City of Warsaw of [...] June 2008). This provision also regulates the complaint and appeal proceedings in the event of questioning the validity of issuing the additional fee document.

The evidence gathered in this case shows that the photographs taken by ZDM employees show both the car with the registration number, a close-up of the windshield and dashboard, as well as the surrounding elements, including a fragment of the street. In one of the photos, apart from a fragment of the dashboard, the applicant's face is shown, which is almost entirely covered by a mobile phone, and in the next two there is only an outline of his figure in a way that makes identification impossible.

It should be noted that the preparation of photographic documentation by ZDM inspectors does not result directly from the legal requirement, but only, as indicated by the Director of ZDM, from practice. However, it should be considered that collecting evidence in a reliable and complete manner allows for a meaningful assessment of whether the statutory obligation to pay the fee for parking a motor vehicle in the unguarded paid parking zone has been fulfilled. The photographic documentation leaves no doubt as to the circumstances related to the parking of the vehicle in question. Therefore, it is important for determining the actual course of the event, as well as for possible further complaint or appeal proceedings.

Moreover, it should be emphasized that the employees of ZDM, documenting the incident with the use of a photograph, which were included in the evidence, acted under the granted right to control the payment of parking fees and collecting additional fees. The taking by the inspectors of photos documenting the parking of the vehicle without a proof of payment for parking and recording on them, in addition to the registration number of the car's dashboard, as well as a fragment of the figure and a small part of the complainant's face remaining in the vehicle, was generally required to fulfill the statutory obligation.

In addition to the above considerations, it should be noted that the President of the Office is not authorized to assess whether

the vehicle parking fee was paid in a timely or delayed manner, and for what reasons. The resolution of this issue is subject to separate procedures specified in the provisions governing the complaint and appeal procedure. Therefore, the inclusion by the Complainant in the case file of a control ticket confirming the payment of the parking fee is irrelevant for the present proceedings.

Bearing in mind the above, in the opinion of the President of the Personal Data Protection Office, there was no breach of the provisions on the protection of personal data, as the processing of the Complainant's personal data by ZDM, represented by the Director, is based on Art. 6 sec. 1 lit. c of the general regulation on data protection due to the necessity of their processing for the implementation of rights resulting from the provisions of the Act on public roads and the cited resolutions of the Council of the Capital City of Warsaw.

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. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) in connection with art. 13 § 2, art. 53 § 1 and article. 54 § 1 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302, as amended), from this decision, the party has the right to lodge a complaint with the Provincial Administrative Court, 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 (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.

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