

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 05

March

2019

DECISION

ZSOŚS.440.8.2018

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) in connection with joke. 7 sec. 1 and art. 57 sec. 1 point f and art. 6 sec. 1 lit. c and lit. 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 of Laws No. UE.L.2016.119.1, as amended) after conducting administrative proceedings regarding the complaint of Mr. GG, residing in K., about irregularities in the processing of his personal data by the Municipal Police Commander in K., consisting in unlawful disclosure of his personal data to an unauthorized person , i.e. Mr. JK - Deputy President of the Cooperative "[...]" in K.,

I refuse to accept the application

Justification

On [...] July 2018, the Personal Data Protection Office received a complaint from Mr. GG (hereinafter: "the Complainant") about irregularities in the processing of his personal data by the Municipal Police Commander in K. (hereinafter: the "Commander"), consisting in making his personal data available in the form of a telephone number and address of residence to an unauthorized person, i.e. to Mr. JK - Deputy President of the Cooperative "[...]" in K. data controller, information obligations specified in art. 12 and art. 13 of the General Data Protection Regulation. In connection with the above, the Complainant requested that the Commander be ordered to fulfill the above-mentioned disclosure obligations and to delete his personal data in accordance with Art. 58 sec. 2 point f of the general regulation on the protection of personal data and the imposition of a financial administrative penalty against the Commander. In the justification of the complaint, the complainant explained that he had disclosed his personal data during his questioning as a witness in the proceedings conducted by the Police authorities. He was instructed that his personal data would not be disclosed in the case files, but only included in the address attachment, available to the authority conducting the proceedings. However, as the complainant claims, his personal data was made

available by the data controller to an unauthorized person - Mr. J. K., with whom he is in conflict and, moreover, he is not a party to the proceedings conducted by the Police authorities. In connection with the above, the Complainant indicates that the data controller unlawfully disclosed his personal data as he did so without his consent, which constituted a breach of his right to the protection of private and family life, honor and good name.

In letters of [...] July 2018 and [...] September 2018 entitled "supplementing the complaint of [...] July 2018 regarding unlawful disclosure of personal data and irregularities in the processing of personal data", the complainant raised that he still does not know who the administrator of his personal data is, because on the website of the Police Station in the "contact" tab there is information that the administrator of personal data is the Municipal Police Commander in K., and in the "handle the case" tab, in the PDF file containing information on the processing and protection of personal data, it was indicated that the data administrator was the Voivodship Police Commander in K. To confirm the above, the complainant attached printouts from the website of the Police Station in K. Moreover, he pointed out that the Commander's reference to Art. 156a of the Act of 6 June 1997 Criminal Code (Journal of Laws of 2018, item 1600, as amended), hereinafter referred to as: "CCP", as the basis for disclosing his personal data to the Housing Cooperative "[...] ", Hereinafter referred to as: "the Cooperative ", due to the lack of a legal interest in obtaining these data, the more that the apartment is a separate property. The applicant also stressed that the Prosecutor had not given his consent to disclose his telephone number. The applicant also submitted that the Commandant had unauthorized access to Mr J. K. data concerning the death of his deceased mother.

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

The President of the Personal Data Protection Office informed the Complainant and the Commander of the initiation of the investigation procedure and asked the Commander to comment on the content of the complaint and to provide written explanations. On [...] August 2018, the Office for Personal Data Protection received a letter from the Commander ([...]), in which he explained that the officers of the Criminal Division of the Police Commissariat in K., under the supervision of the District Prosecutor's Office [...] in K., they performed activities as part of the entrusted investigation into the manslaughter of the applicant's mother. In the course of the proceedings, it was found that the body was in the apartment probably for the period from [...] to [...] 2018. In connection with the situation, the Cooperative asked the Police Station in K. to allow contact with the heir, the son of the deceased woman - The applicants in order to disinfect the premises. As indicated by the

Commandant in the above-mentioned in writing, after a telephone conversation with the clerk of the proceedings, the Complainant undertook to contact the Cooperative, but stated that the disinfection activity should be performed by the Cooperative. As is apparent from the letter of [...] August 2018 from the Commander ([...]), the Complainant, however, failed to comply with the above obligation. On [...] July 2018, the Deputy Commander of the Police Station in K., responding to the letter of [...] July 2018, of the Management Board of the Housing Cooperative [...] ([...]), signed by two members of the management board: President of the Management Board, Manager of the Cooperative [...] and Vice-President of the Management Board, Manager of GZM [...], pursuant to Art. 156a of the Code of Criminal Procedure and, with the consent of the Prosecutor of the District Prosecutor's Office [...], provided the Cooperative with the address of the complainant in order to carry out its statutory tasks related to disinfection of the dwelling which posed a sanitary and epidemiological risk.

In the above-mentioned In the letter, the Commandant also indicated that by a letter of [...] July 2018 ([...]) the Complainant had been informed about the factual and legal grounds for the transfer of his personal data to the Housing Cooperative (a letter in the case files). In a separate letter of [...] August 2018 ([...]), the complainant was informed about carrying out checks that did not confirm the breach of the provisions of the general regulation on the protection of personal data. To the above-mentioned information clauses regarding the processing of personal data were attached to the letters, together with the data of the data administrator - the Municipal Police Commander in K.

The commander also referred to incorrect information on the information clauses regarding the processing of personal data, pointing out that the use of the "settle the matter" tab on the websites of the Municipal Police Headquarters in K. and the Police Station in K. causes redirection to the forms of the Provincial Police Headquarters in K.

In a letter of [...] October 2018 ([...]), in response to the complainant's allegations contained in the above-mentioned letter of [...] September 2018, the Commandant reiterated the legal basis for disclosing the Complainant's personal data , i.e. art. 156a of the Code of Criminal Procedure He pointed out that the cited provision allows for the disclosure of data or original documents included in the address attachment, but it does not restrict the data to the place of residence or name and surname. In the present case, the complainant's telephone number was stored in the address attachment to the case files, and the complainant himself, as the Commander claims, consented to telephone contact with the representatives of the Cooperative in this case.

In addition, he explained that the Cooperative, striving to disinfect the apartment, was intended to protect the health of the

building's residents against the negative consequences of the progressive decomposition of the body in one of the apartments. He also indicated that a notification of a crime under Art. 165 § 1 of the Penal Code, i.e. bringing a danger to the life or health of many people by causing an epidemiological threat in connection with the attitude of the Complainant, who did not disinfect the premises himself or attempted to cooperate in this respect with the Cooperative, despite the existence of a legal obligation in this regard .

The President of the Office for Personal Data Protection informed the Complainant and the Commander in letters of [...] November 2018 about the conduct of 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 reported 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.

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

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 Regulation 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 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.

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 the course of the proceedings, the President of the Personal Data Protection Office established that the complainant's

personal data had been obtained in connection with the activities carried out by police officers as part of the investigation into the accidental manslaughter of his mother. The applicant in these proceedings acted as a witness. His personal data in the form of his name, surname, address and telephone number were included in the address attachment to the case files. The cooperative, striving to disinfect the apartment in order to protect the health of the building's residents against the negative consequences of the progressive decomposition of the body in the complainant's premises, asked the Commander to contact the Complainant. Due to the lack of cooperation between the complainant and the Cooperative, the Prosecutor of the District Prosecutor's Office [...] at the request of the Management Board of the Cooperative and pursuant to Art. 156a of the Code of Criminal Procedure consented to the disclosure of the complainant's address in order to enable the performance of the Cooperative's tasks related to maintaining the property in a proper hygienic and sanitary condition.

Pursuant to Art. 156a of the Code of Criminal Procedure "The data or original documents included in the address attachment shall be made available only to state authorities and local government authorities upon their request, if it is necessary for the performance of the statutory tasks of these authorities. They can also be made available at the request of other institutions or persons, if this is justified by their important interest ". The provision specifies the method of making the content of the address attachment available to specific entities, if they submit a request to the authority conducting the proceedings or the prosecutor, depending on the procedural status of the authority or the person requesting the disclosure of such data. In the present case, consent to disclose the complainant's personal data was given by the prosecutor supervising the preparatory proceedings. In addition, the provision requires justification of the application by indicating an important interest in obtaining protected information included in the address attachment in the case of entities classified by the legislator as "other institutions", which undoubtedly include housing cooperatives. In a letter of [...] July 2018, the management board of the Housing Cooperative indicated as an interest in obtaining the Complainant's personal data the sanitary and epidemiological risk of neighboring residential premises due to the decomposition of human corpses in the premises belonging to the Complainant.

It should be noted here that pursuant to Art. 22 of the Act of December 5, 2008 on the prevention and combating of infections and infectious diseases in humans (Journal of Laws of 2018, item 151, as amended), the legislator imposed on both the owner and the property manager, in this case the Cooperative, the obligation to maintaining the proper sanitary and epidemiological condition of the property. This means that the Cooperative is obliged to determine whether the sanitary condition of the building, including the flat, does not indicate a threat to the life or health of other residents, and if irregularities are found, take

appropriate steps to eliminate it. Due to the fact that the premises is a separate property, the Cooperative made an attempt to obtain the address details of its owner in order to oblige him to disinfect the premises. At the same time, it should be noted that pursuant to Art. 13 of the Act of June 24, 1994 on the ownership of premises (Journal of Laws of 2018, item 716, as amended), the owner bears the expenses related to the maintenance of his premises, he is obliged to maintain his premises in a proper condition, keep order of the house, participate in the management costs related to the maintenance of the common property, use it in a way that does not hinder the use by other co-owners and cooperate with them in the protection of the common good. Moreover, it should be indicated that the Act of 15 December 2000 on housing cooperatives (Journal of Laws of 2018, item 845) in Art. 61 sec. 3 point 2 allows the Cooperative to substitute work for the owner of the premises, after the premises have been made available by him. The same obligations to maintain the premises in a proper technical and sanitary condition and to make the premises available for replacement work are specified in the Statute of the Housing Cooperative "[...]" in K. of [...] November 2007, as amended in § 26 section 10 and paragraph 13 point b.

In the present case the applicant undoubtedly failed to ensure the proper sanitary condition of his flat, as he had not performed the necessary disinfection in order to remove harmful substances and biological traces of the corpse. He also did not attempt to cooperate in this respect with the Cooperative, which was entitled to perform this action as part of substitute performance, as provided for in Art. 61 sec. 3 point 2 of the act on housing cooperatives. Thus, he did not fulfill the legal obligations imposed on him, as the owner of the premises, resulting from the above-mentioned legal acts.

Summarizing the above considerations, it should be noted that Art. 156a of the Code of Criminal Procedure supplements the general norms regarding the availability of materials collected in the course of criminal proceedings and determines the legality of disclosure of personal data, including the complainant's telephone number, by the authorities conducting the proceedings for the Cooperative, which had an "important interest" in the form of ensuring a proper hygienic and sanitary condition real estate carried out in the public interest.

Referring to the issue of disclosing the data of the Complainant's deceased mother, it should be noted that the General Data Protection Regulation does not apply to the personal data of deceased persons (recital 27 of the Regulation).

With regard to the complaint of the Complainant regarding incorrect information on the information clauses regarding the processing of personal data posted on websites, it should be noted that on the website of the Police Station in K. in the "contact" tab there is an information clause along with the given data administrator and inspector personal data protection. In

turn, after selecting the "handle the matter" tab on this page, you will be redirected to the forms used at the Provincial Police Headquarters in K. for dealing with specific cases. This tab also includes a clause regarding the processing and protection of personal data at the Provincial Police Headquarters in K., but with regard to matters falling within the competence of this unit. Moreover, according to the evidence collected, the Commandant in the letters of [...] July 2018 and [...] August 2018 informed the Complainant about the factual and legal grounds for the transfer of his personal data to the Cooperative and attached information clauses regarding the processing of personal data together with the data of the data administrator - the Municipal Police Commander in K. and the personal data protection inspector, therefore he fulfilled the information obligation. Bearing in mind the above, it should be stated that on the part of the Commander there was no violation of the rules of personal data processing, as the conditions for the legality of the Complainant's data processing based on the above-mentioned provisions were met.

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. 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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