

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 19

March

2019

DECISION

ZSOŚS.440.24.2019

Based on Article. 105 § 2 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 100 of the Act of 6 December 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 on a complaint by the Commander of the City Guard in R., for refusal disclosure of personal data in the field of name, surname and address of the subscriber's telephone number [...] by P. Sp. z o.o.,

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from the Commander of the City Guard in R., hereinafter referred to as the Commander, against the refusal to disclose personal data regarding the name, surname and address of the subscriber's telephone number [...] by P. Sp. z o.o., hereinafter referred to as the Company.

In the content of the above-mentioned of the complaint, the Commandant indicated that on [...] May 2017, an officer of the Municipal Police in R., in the course of his official duties, revealed an offense consisting in sticking notices on the gutters and on the railings of the building at ul. [...] in R., owned by the [...] Housing Cooperative. An unknown person placed in the above-mentioned places of the advertisement with the following content: "Highest Quality Original Cigarettes Free delivery tel. [...]" without the consent of the managing body, therefore an offense under Art. 63a § 1 of the Act of 20 May 1971 Code of Petty Offenses (Journal of Laws 2018, item 618). The commandant also explained that [...] in June 2017, the Municipal Police in R. contacted the telephone operator P. sp. Z o.o. with a request for information regarding personal data, i.e. name, surname and address of the subscriber of the above-mentioned phone. In response from [...] July 2017, the Company refused to grant the above-mentioned information, referring to Art. 159 paragraph 1 of the Act of 16 July 2004 Telecommunications Law (Journal of Laws of 2018, item 1954), which excludes the possibility of disclosing personal data covered by

telecommunications confidentiality for the purposes of non-criminal proceedings.

Considering the above, the Commandant requested the Inspector General to take actions aimed at ordering the Company to disclose [...] the personal data of the subscriber's telephone number, which are necessary for the investigation and determination of the perpetrator of the offense.

In the course of the proceedings initiated by the above-mentioned Due to 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 [...] August 2017, the Inspector General for Personal Data Protection informed the Commander of the initiation of the proceedings and asked the President of the Management Board of P. Sp. z o.o. (hereinafter: "President of the Management Board") to respond to the content of the complaint and to provide written explanations. On [...] August 2017, the Office of the Inspector General for Personal Data Protection received a letter from Mr. JM, Information Security Administrator (sign: [...]), who, acting as a proxy, explained that the Company processes personal data of the subscriber's telephone number [...] pursuant to the provisions of the Act of July 16, 2004. Telecommunications Law and Art. 23 sec. 1 of the Act of August 29, 1997 on the protection of personal data in connection with the provision of telecommunications services in the pre-paid system. The submitted explanations also indicated that the scope of the subscriber's personal data being processed includes the first and last name, series and number of the ID card, PESEL number, and the Company processes the above-mentioned data in the file named "Client". The company also explained that it processes the subscriber's personal data for the purpose of providing services, selling the Company's products and services, marketing activities, data archiving and for the purpose of conducting economic analyzes. At the same time, the Information Security Administrator explained that on [...] June 2017, the Company received a letter from the Commander in the case conducted under the number [...] with a request for information on personal data, i.e. name, surname and address of residence a subscriber's telephone number [...], however, pursuant to Art. 159 paragraph 1 and 2, art. 160 sec. 1 of the Act of July 16, 2004, Telecommunications Law (Journal of Laws of 2018, item 1954) and the provisions of the Act of May 20, 1971, Code of Petty Offenses (Journal of Laws of 2018, item 618), hereinafter "the Code of Petty Offenses ", The company refused to disclose the data in question.

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws 2018, item 1000, as amended), on 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 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 (Journal of Laws of 2016, item 922, as amended) in accordance with the principles set out in the Code of Administrative Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In view of the content of art. 45 of the Code of Petty Offenses, according to which the punishability of an offense ceases if a year has elapsed since its commission, and if proceedings are instituted during this period, the punishment of the offense ceases with the lapse of 2 years from the commission of the offense, in a letter of [...] November 2018 (sign: [...]), the President of the Office asked whether the Commander of the City Guard upholds the demand expressed in the complaint to order P. Sp. z o.o. sharing the above-mentioned personal data of the subscriber's telephone number [...], and if so, on what legal basis and for what purpose.

In a letter of [...] December 2018 (ref. Mark: [...], [...]), the Commandant informed that due to the statute of limitations on the offense under Art. 63a § 1 of the Code of Petty Offenses, waives the order of P. Sp. z o.o. the provision of personal data of the subscriber's telephone number [...].

In view of the above, in a letter of [...] December 2018, the President of the Office asked the Company whether he or she opposed the discontinuation of the proceedings in question. Above the letter was delivered to the party on [...] January 2019 (the return confirmation is in the case file). In the absence of an objection within the prescribed period by the above-mentioned, it should be considered that the other party does not object to the discontinuation of the proceedings.

In view of the above, the President of the Personal Data Protection Office considered the following. The decisive factor for the resolution of this case is the fact that in the course of the proceedings initiated by a complaint against P. Sp. z o.o., the Commander of the Municipal Police in R. withdrew from the request expressed in the complaint to order the Company to disclose the subscriber's personal data, telephone number [...].

Pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as the Code of Administrative Procedure, when the proceedings for any reason have become redundant in whole or in part , a public administration body issues a decision to discontinue the proceedings, respectively, in whole or in part. Pursuant to Art. 105 § 2 of the Code of Administrative Procedure, a public administration body

may discontinue the proceedings if it is requested by the party on whose request the proceedings were initiated, and other parties do not object to it and if it is not contrary to the public interest.

The doctrine indicates that the discontinuation of proceedings under Art. 105 § 2 does not differ in legal consequences from the obligatory redemption pursuant to Art. 105 § 1, because in both cases the proceedings are irrelevant. Only with the proviso that the provision of Art. 105 § 1 refers to objectified cases, while the provision of § 2 refers to a situation in which a party to the proceedings refrains from requesting a decision on the essence of the case, concerning its legal interest or obligation. This does not mean that this legal interest or obligation ceases to exist, but for the party, the decision on them in an administrative decision loses its legal significance, so it is a relative pointlessness, because it relates to the content of the party's request, which was the basis for initiating the proceedings (B. Adamiak, J. Borkowski, Code of Administrative Procedure. Commentary, 7th edition, CHBeck Publishing House, Warsaw 2005). The Supreme Administrative Court also ruled on March 11, 1997 (file reference number I SA / Po 1281/96) that withdrawing the request to initiate proceedings is tantamount to requesting discontinuance of the proceedings. It means that the party is no longer interested in the substantive examination of the case. At the same time, the Company did not object to the discontinuation of the proceedings in this case. In the opinion of the President of the Personal Data Protection Office, there is also no premise that it is contrary to the public interest, understood as an interest that concerns a larger number of people. In view of the above, it should be stated that the conditions for discontinuation of the proceedings pursuant to Art. 105 § 2 of the Code of Administrative Procedure.

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

Based on Article. 9 sec. 2 of the Act of 6 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), from this decision, the party has the right to lodge a complaint against the decision of the President of the Office for Personal Data Protection to Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party.

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