

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

September

2019

## DECISION

ZKE.440.27.2019

Based on Article. 105 § 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. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended) and art. 12 point 2, art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) after conducting administrative proceedings regarding the complaint of Mr. RM, against the refusal to provide personal data by the SSA ( previously: Bank ZSA) President of the Personal Data Protection Office,

discontinues the proceedings.

## JUSTIFICATION

The Inspector General for Personal Data Protection (currently the President of the Office for Personal Data Protection) received a complaint from Mr. R. M., hereinafter referred to as: the Complainants about the refusal to provide personal data by Bank Z. S.A. (currently S. S.A.), hereinafter referred to as: the Bank.

In the complaint, the Complainant requested that the Bank be ordered to disclose personal data in the form of the name and surname, address and PESEL number of the bank account holder to which the Complainant paid the price for a mobile phone purchased under a sales contract concluded via the auction site [...]. The complainant pointed out that the seller, P. R., had not performed the sales contract, ie had not handed over the purchased telephone to the complainant. The complainant justified his request with the fact that the above-mentioned personal data was necessary for him to bring a civil claim to the Common Court in order to enforce the legal protection of claims against P. R., and the Bank refused to disclose this data to him.

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 arrangements:

By letter of [...] July 2014, the complainant requested Bank Z. (now: S. S.A.) to disclose the personal data of the holder of the

bank account No. [...] to which he had paid the price for the mobile phone purchased under the sales contract. P. R., who from the information of the Complainant was the account holder, did not provide a mobile phone to R. M. The scope of the requested data included the indication of the name and surname, address and PESEL number.

The Bank refused to disclose the requested personal data in a letter of [...] August 2014, indicating the content of Art. 104 of the Banking Law - "obligation to maintain banking secrecy".

The complainant asked the Inspector General for Personal Data in a letter of [...] November 2014 to order the Bank. sharing the personal data of the account holder.

On [...] February 2015, the Inspector General for Personal Data Protection asked the Bank to provide written explanations. In reply by a letter of [...] March 2015, the Bank explained that it did not process any personal data of the account holder [...] requested by the Complainant. The above-mentioned account is of a technical nature and is assigned to the top-up card [...] and is used for topping-up and settlement of payment transactions. Card related to the above-mentioned the account is a bearer payment card. In the explanations, the Bank also indicated that even if it processed the data of the holder of the above-mentioned he would refuse to accept this bill to the Complainant on the basis of bank secrecy.

In these facts, the President of the Personal Data Protection Office considered the following.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Act, proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, 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 U. of 2016, item 922, as amended), in accordance with the principles set out in the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "kpa ". At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on

From May 25, 2018, also Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted on the basis of the Act of August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure) and on the basis of the Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed before the date of entry into force of the new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which "the public administration body assesses the actual state 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 the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071) M. Jaśkowska, A. Wróbel, Lex., EI / 2012).

Bearing in mind the above, the President of the Personal Data Protection Office (UODO), on the basis of the evidence collected in this case, assessed the processing of the Complainant's personal data in the context of the provisions of Regulation 2016/679.

Referring to the Complainant's request to order the disclosure of personal data by Bank Z. S.A. (currently: S. S.A.), it should be noted that, as a result of the investigation, it was found that the Bank did not process the personal data of the account holder requested by the Complainant. Thus, pursuant to the provisions of Art. 105 paragraph. 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, the public administration authority issues a decision on discontinuation of the proceedings, respectively, in whole or in part. In this state of affairs, it should be stated that the Bank does not process and did not process the personal data of the account holder requested by the Complainant, and therefore conducting proceedings against this entity is pointless.

The irrelevance of the proceedings means that there is no element of the material legal relationship, and therefore a decision to settle the matter cannot be issued by resolving it on its merits (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Comment" 7th edition Wydawnictwo CH Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008, file ref. no. III SA / Kr 762/2007): "The procedure becomes pointless when any of the elements of the material-legal relationship is missing, which means that it is impossible to settle the

matter by deciding on the merits".

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and continuing the proceedings in such a case would be defective, which would have a significant impact on the result of the case. In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

Based on Article. 127 § 3 of the Code of Civil Procedure, 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 the right to assistance, including exemption from court costs.

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