THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 12

April

2019

DECISION

ZSZZS.440.672.2018

DECISION

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) and Art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) 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) in connection with joke. 9 sec. 2 lit. h) 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, following the procedure administrative regarding the complaint of Mr. RL about the processing of his personal data by the National Health Fund, the President of the Office for Personal Data Protection

refuses to accept the request.

Justification

The Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Mr. R.L., hereinafter referred to as the Complainant, about the processing of his personal data by the National Health Fund, hereinafter referred to as the NFZ.

In the content of his complaint, the Complainant argued that the National Health Fund kept in its databases confidential information “of a mostly historical nature”, such as data on the treatment and medications taken. Moreover, the Complainant indicated that unauthorized third parties had access to these data, which resulted in the Complainant suffering financial and professional losses. In view of the above, the Complainant requested that his data concerning the provided medical services and the filled prescriptions for medications be removed from all NFZ databases.

In the course of the administrative proceedings, the President of the Personal Data Protection Office (hereinafter referred to as

the President of the Personal Data Protection Office) established the following facts.

The complainant asked the National Health Fund in a letter of [...] July 2017 to remove his data on the provided healthcare services and prescriptions from the NHF databases.

In a letter of [...] August 2017, the National Health Fund informed the Complainant about the legal basis for the processing of personal data of beneficiaries, and at the same time invited him to its seat "in order to fulfill the request", referring to the lack of the possibility of "unequivocally" verification of the Complainant's identity.

[...] On September 2017, the NFZ received a letter from the Complainant, again calling for the deletion of data on the provided healthcare services and filled prescriptions from the NFZ databases.

On [...] November 2017, in response to the Complainant's letter, the National Health Fund indicated that the data processing performed by him "does not require the consent of the data subject", and that the Complainant "cannot demand deletion of data only because in his subjective opinion, these data are not properly controlled and protected against access by third parties ".

In the explanations submitted in the matter, the National Health Fund indicated that it has the right to process the complainant's personal data pursuant to art. 188 of the Act of 27 August 2004 on health care services financed from public funds in order to, inter alia, control of the principles of legality, efficiency, reliability and purposefulness of providing health services.

The National Health Fund also informed that it had obtained the complainant's personal data pursuant to Art. 189 paragraph. 2 of the Act on health care services financed from public funds (the scope of which has been specified in detail by the Minister of Health on the basis of the statutory authorization specified in Article 190 (1) and (2) of the Act in question), receiving them from service providers who are obliged to collect and transfer to the National Health Fund the data referred to above. recipe.

Having read all the evidence collected in this case, the President of the Office for Personal Data Protection 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), hereinafter referred to as the Act of 2018, the Office of the Inspector General for Data Protection Personal Data has become 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 (Journal of Laws of 2016, item 922 with d.), 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 (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as Kpa. All activities undertaken by the Inspector General for Personal Data Protection 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., El / 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 ".

It should be emphasized that the decisive factor for the decision that must be issued in the present case is the fact that the processing of the complainant's personal data began during the period when the 1997 Act was in force, but is currently being continued. Therefore, it should be stated that the relevant provisions in this case are the application of the provisions in force at the time of issuing the decision on the case, i.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 the repeal of Directive 95/46 / EC (Official Journal of the European Union, L 119, 4 May 2016), hereinafter referred to as the GDPR, because the President of the Personal Data Protection Office must assess whether the questioned process of personal data processing as at the date of the decision administration complies with the law.

Pursuant to Art. 2 of the Act on healthcare services financed from public funds of 27 August 2004 (Journal of Laws of 2018,

item 1510, as amended), hereinafter referred to as the Act on benefits, the beneficiary is a person entitled to use healthcare services financed by from public funds on the terms specified in the Act on benefits.

It should be pointed out that the personal data of the Complainant, as recipients of the completed prescriptions for medicines and provided medical services, fall within the scope of personal data processed centrally by the National Health Fund. According to Art. 188c of the Act on benefits, the National Health Fund is obliged to run and maintain an electronic system for monitoring drug programs. Therefore, it should be considered that the administrator of the above data contained in this system and at the same time a party to this procedure is the National Health Fund, represented by the President of the National Health Fund. The data collected by the National Health Fund in the field of trade in drugs, foodstuffs for particular nutritional uses, medical devices covered by reimbursement resulting from completed prescriptions issued by an entitled person, including data of the insured, are provided to the National Health Fund by pharmacies pursuant to Art. 45 sec. 1 and 2 of the Act of 12 May 2011 on the reimbursement of drugs, foodstuffs for particular nutritional uses and medical devices (Journal of Laws of 2017, item 1844).

Referring to the allegations of improper processing of the Complainant's personal data by the National Health Fund, it should be noted that, in the opinion of the President of the Personal Data Protection Office, the data on medical services provided and prescriptions for medications are personal data on health within the meaning of Art. 9 sec. 1 GDPR. The prerequisites for the legality of their processing can be found in Art. 9 sec. 2 GDPR. They allow the processing of personal data, including when the processing of data referred to in sec. 1 above of article is necessary for the purposes of preventive healthcare or occupational medicine, for the assessment of the working capacity of a worker, medical diagnosis, the provision of health care or social security, treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to an agreement with a healthcare professional and subject to the conditions and safeguards referred to in para. 3 (letter h).

The National Health Fund obtained the complainant's personal data pursuant to art. 188 of the Act on Benefits, which regulates what personal data under the general health insurance may be processed by the National Health Fund, and also sets the purposes under which these data may be processed. Paragraph 2c of the above-mentioned of this article directly entitles the National Health Fund to obtain and process personal data related to the issuance of prescriptions for reimbursed drugs, foodstuffs for particular nutritional uses and medical devices and their implementation at a pharmacy.

Moreover, the National Health Fund is obliged to collect data provided by service providers who have concluded an agreement with the National Health Fund for the provision of healthcare services pursuant to art. 189 paragraph. 2 of the Act on benefits, regulated in detail in the Regulation of the Minister of Health of 20 June 2008 on the scope of necessary information collected by service providers, the detailed manner of registering this information and providing it to entities obliged to finance benefits from public funds (Journal of Laws of 2016, item .192, as amended).

In his complaint, the complainant demanded that his personal data be removed from the NFZ databases pursuant to Art. 32 sec. 1 point 6 of the Act of 1997. Pursuant to this provision, the person had the right to request supplementing, updating, rectifying personal data, temporarily or permanently suspending their processing or removing them if they are incomplete, out of date, untrue or have been collected in violation of the Act or are they are unnecessary for the purposes for which they were collected. The complainant did not prove that his personal data collected by the National Health Fund had become incomplete, out of date, untrue or had been collected in violation of the Act, or was unnecessary for the purposes for which they had been collected. In addition, the National Health Fund was authorized to process them under the provisions of the Act on benefits, which was the fulfillment of the premise legalizing the processing of personal data, pursuant to art. 27 sec. 2 point 2 of the Act of 1997, according to which the processing of "sensitive" data without the consent of the data subject was permissible, when specific provisions of another law allowed for the processing of such data without the consent of the data subject and provided full guarantees protect them. It should be noted that the processing of personal data on the date of the decision is based on the premise of Art. 9 sec. 2 lit. h) GDPR. In such a situation, the National Health Fund did not and does not need the Complainant's consent to process his data, as it processes them on the basis of legal provisions.

Regarding the disclosure of the Complainant's personal data by the National Health Fund to third parties, it should be noted that in accordance with the wording of art. 36 sec. 1 of the Act of 1997, the data controller was obliged to apply technical and organizational measures ensuring the protection of personal data being processed, appropriate to the threats and categories of data protected, and in particular, should protect the data against disclosure to unauthorized persons, removal by an unauthorized person, processing in violation of of the Act and the alteration, loss, damage or destruction. Proper management of processed personal data, especially in terms of their security, requires proper identification of this personal data and determination of the place and method of its storage. The choice of appropriate, for individual resources, methods of managing their protection and distribution, depends on the information carriers used, the type of devices, hardware and software used.

It should be noted that the President of the Personal Data Protection Office has no evidence of unauthorized disclosure of the Complainant's personal data to third parties. The complainant informed about the practice of disclosing his data by the National Health Fund for several years, but he did not provide any evidence to confirm the claims made.

Due to the fact that the analysis of the collected evidence did not confirm the complainant's allegation, it should be pointed out that the public administration body may consider the facts of the case under examination as established only on the basis of undoubted evidence and cannot limit itself to substantiation in this respect, unless the provisions of the Act from on June 14, 1960 Kpa. As stated by the Supreme Administrative Court in the judgment of 9 July 1999 (reference number III SA 5417/98), "the body conducting the proceedings must strive to establish the substantive truth and, according to its knowledge, experience and internal conviction, assess the evidential value of individual evidence, proving one circumstance for other circumstances ".

Considering the above, it should be stated that in the course of the explanatory procedure no unauthorized acquisition of the Complainant's personal data by the National Health Fund was found. Thus, there is no evidence that would make it possible to establish a breach of the provisions on the protection of personal data. The applicant also failed to provide such evidence in the course of these proceedings.

It should be noted that the administrative procedure conducted by the President of the Personal Data Protection Office under the Act of 1997 is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the Act of 1997 in connection with Art. 160 sec. 2 of the Act of May 10, 2018 (Journal of Laws of 2018, item 1000). As is clear from the wording of Art. 18 sec. 1 of the Act of 1997, in the event of violation of the provisions on the protection of personal data, the authority for the protection of personal data ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, and in particular removal of the deficiencies (point 1), supplementing, updating, rectifying, disclosing or not disclosing personal data (point 2), applying additional security measures for the collected personal data (point 3), suspending the transfer of personal data to a third country (point 4), securing data or transferring it to other entities (point 5), deletion of personal data (point 6). The assessment carried out by the President of the Personal Data Protection Office in each case serves to examine the legitimacy of the referral to a specific subject of the order, corresponding to the disposition of art. 18 sec. 1 of the Act of 1997 to restore lawfulness in the process of data processing - it is therefore justified and necessary only insofar as there are irregularities in the processing of personal data. In the opinion of the President of the Personal Data

Protection Office, there are no grounds to conclude that the Complainant's personal data before May 25, 2018 were processed by the National Health Fund in a manner inconsistent with the provisions of the Act of 1997. The complained process was based on the premise specified in Art. 27 sec. 2 point 2 of the Act of 1997. Currently, while processing the complainant's personal data, the National Health Fund has the premise specified in Art. 9 sec. 2 lit. h) GDPR.

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 Administrative 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 an exemption from court costs or the right to assistance.

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