

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 15

May

2019

## DECISION

ZSPU.440.423.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 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 letter f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general data protection regulation) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2) after conducting administrative proceedings regarding the complaint of Mrs. in K., irregularities in the processing of her personal data by the President of the City of K., the President of the Office for Personal Data Protection refuses to accept the request.

## JUSTIFICATION

The Personal Data Protection Office received a complaint from Ms R. J. Zam. in K., hereinafter referred to as the Complainant, for irregularities in the processing of her personal data by the President of the City of K., hereinafter referred to as the President. In the content of the above-mentioned of the complaint The complainant submitted that on [...] November 2017, Mr. P. P., acting through his attorney, Mr. D. P. - legal advisor at the K. City Hall, attached to the files of the proceedings conducted by the District Court in K .. act [...] her statement on her professional and financial situation addressed to the Municipal Office of K., and submitted by her in a case concerning granting a school scholarship. In the opinion of the complainant, the above-mentioned Mr. P. P. obtained the document illegally as a local government official. In the complainant's opinion, the declaration of income concerned the procedure for granting a school scholarship awarded by the President and, in accordance with the provisions of law, it should be made available with the complainant's consent and used only for the purposes of granting the scholarship. The complainant added the following: "(...) there is no provision indicating the possibility

of using someone else's documents submitted to the office for proceedings other than the one it relates to, and certainly not to remove the document from the files of a given case, make a photocopy and removal from institutions without a legal basis, for the private purposes of officials (...) ”.

In the course of the investigation conducted in this case, the President of the Personal Data Protection Office established the following facts.

The statement of the Complainant of [...] September 2016 is included on an A4 card together with the statement of her husband, Mr. K. J. The card is entered unilaterally (in the case file). The Complainant's statement contains her personal data in the scope of information on the family benefit received from MOPR in K., in the amount of PLN 697.00 per month, including a family allowance for three children in the amount of PLN 354.00 per month, an allowance to the family allowance for raising a child in a family with many children in the amount of PLN 90.00 per month, an allowance to the family allowance for education and rehabilitation of a disabled child in the amount of PLN 100.00 per month and a care allowance in the amount of PLN 153.00 per month. In the above-mentioned the statement also includes the complainant's personal data about being registered with the County Employment Office in K. as an unemployed person without the right to unemployment benefit and about receiving the benefit for the statutory period of receiving until [...] August 2016 - declaration in the case files.

The complainant's personal data contained in the above-mentioned in a statement of [...] September 2016, the President obtained a school scholarship for the complainant's children in connection with the complainant's application. The complainant's personal data are currently being processed by the President in order to determine the right to grant financial support of a social nature (school scholarship) for the Complainant's children for a given school year, i.e. consideration of the complainant's application, granting the benefit and payment of the benefit - a letter from the President of [...] November 2018 addressed to the President of the Personal Data Protection Office - in the case file.

The President of the City of K. is Mr. P. P. - information contained on the website of the Public Information Bulletin of the City of K. [http: \[...\]](http://...).

Mr.PP, acting as a private person, in a letter of [...] June 2017, applied to the Head of the Education Department of the City Hall, with the quotation: which he talks about contributing to the loss of my job. I need this letter to be used in the course of the trial that I brought for the protection of my good name. "

Mr PP initiated a private prosecution against Mr KJ before the District Court in K. II Criminal Division (file number [...]).

admitting evidence in the form of the above-mentioned a statement of [...] September 2016 on the content of the statement signed by the accused and the wording used in it regarding the motive for his actions. The court allowed the above-mentioned requested evidence - minutes from the hearing of [...] November 2017, held by the District Court in K. II Criminal Division (file reference [...]) - in the case files.

Above the statement of Mr. KJ of [...] September 2016 contains the following text: "I declare that I received a permanent benefit from MOPR in K. until [...] August 2016. Currently, thanks to the deceptive actions of PP, I do not work and I do not receive any cash and material benefits. I am aware of the criminal liability for submitting a false statement ".

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

Pursuant to Art. 57 sec. 1 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 EU.L.2016.119.1 and Journal of Laws EU.L.2018.127.2), hereinafter referred to as the GDPR, without prejudice to other tasks set out in this Regulation, each supervisory authority on its territory monitors and enforces the application of this Regulation (point a) and handles complaints lodged by the data subject or by a body, organization or association in accordance with Art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to continue investigations or coordinate actions with another supervisory authority (point f).

Pursuant to Art. 5 sec. 1 GDPR, personal data must be: a) processed lawfully, fairly and in a transparent manner for the data subject ("lawfulness, fairness and transparency"); b) collected for specific, explicit and legitimate purposes and not further processed in a manner inconsistent with these purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is not recognized in accordance with Art. 89 paragraph. 1 to be incompatible with the original objectives ("purpose limitation").

However, according to Art. 6 sec. 1 GDPR, processing is lawful only in cases where - and to the extent that - at least one of the following conditions is met: a) the data subject has consented to the processing of his personal data in one or more specific purposes; b) processing is necessary for the performance of a contract to which the data subject is party or in order to take

steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; d) processing is necessary to protect the vital interests of the data subject or of another natural person; e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; f) processing is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular when the data subject is a child.

In turn, according to art. 6 sec. 4 GDPR, if the processing for a purpose other than the purpose for which the personal data was collected is not based on the consent of the data subject, or Union or Member State law which constitute a necessary and proportionate measure in a democratic society to guarantee the purposes, or referred to in Art. 23 sec. 1, the controller - to determine whether the processing for another purpose is compatible with the purpose for which the personal data was originally collected - takes into account, inter alia: a) any relationship between the purposes for which the personal data was collected and the purposes of the intended further processing; b) the context in which the personal data have been collected, in particular the relationship between the data subjects and the controller; c) the nature of the personal data, in particular whether special categories of personal data are processed in accordance with Art. 9 or personal data on criminal convictions and offenses pursuant to Art. 10; d) the possible consequences of the intended further processing for the data subjects; e) the existence of appropriate safeguards, possibly including encryption or pseudonymisation.

Referring the above to the circumstances of the present case, it should be noted, first of all, that Mr. P. P., acting as President, obtained information about the above-mentioned statement by Mr. K. J. of [...] September 2016 in connection with the above-mentioned with the applicant's application for a scholarship addressed to the K. personal data on the basis of a written request of [...] June 2017 addressed to the administrator of this data - the Head of the Education Department of the K. good name, which, in his opinion, was infringed by Mr. KJ in connection with his being the President. It should also be added that the evidence in this case shows that it was not the intention of Mr. P. P. to process the complainant's personal data contained in the above-mentioned the income statement, but the personal data of Mr. K. J., and more specifically the content of his above-mentioned the declaration of [...] September 2016, worded on the same sheet as the applicant's declaration. Since the received document was to present probative value in the initiated criminal proceedings, it was not possible to interfere with its content. As a result of such interference, the document would lose the value of a document within the meaning of Art. 115 § 14

of the Act of 6 June 1997 Penal Code (Journal of Laws of 2018, item 1600, as amended), according to which a document is every object or other recorded medium with which a specific law is related, or which, due to its content, constitutes evidence of a right, legal relationship or circumstances having legal significance. Importantly, the above-mentioned the document, in the submitted form, i.e. containing the complainant's personal data, was admitted by the criminal court as evidence of the case at the hearing on [...] November 2017.

In the opinion of the President of the Personal Data Protection Office, both the acquisition of the complainant's personal data by Mr. P. P. and their subsequent use before the criminal court in the case no. act [...] was based on Art. 6 sec. 1 letter f) of the GDPR. As a rule, the defense of rights before a court with the use of all means of evidence, subject to the assessment of an independent court, is an act in the legitimate interest referred to in Art. 6 sec. 1 letter f) of the GDPR. The processing of personal data for evidence purposes, with the use of evidence containing the data (documents) submitted in a given case, if it is aimed at defending the rights in court, is justified by the legitimate purpose of the administrator. As indicated, only a court may take a position as to the legality of such evidence and its probative value. The Provincial Administrative Court in Warsaw made a similar opinion in the judgment of May 18, 2005 (file number II SA / Wa 1987/04), issued against the background of the facts analogous to this case, in which the data controller used the collected personal data in order to pursue your rights in court, despite the fact that the data was obtained and collected for a different purpose. Above The court concluded this situation as follows: "(...) it is up to the decision of an independent court deciding this case to assess the significance of this information as a means of evidence in the case (...)".

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 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 entry fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2019-05-27