

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 29

November

2019

DECISION

ZKE.440.29.2019

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) and pursuant to Art. 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), art. 18 and art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended, and of 2018, item 138) 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 regulation on data protection) (Journal of Laws UE L 119 of 04/05/2016, p. 1 and Journal of Laws EU L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. PS and MS to disclose their personal data to unauthorized persons by Z. Spółka z oo, President of the Office for Personal Data Protection refuses to accept the request.

Justification

The President of the Personal Data Protection Office (formerly the Inspector General for Personal Data Protection) received a complaint from Mr. P. S. and Mrs. M. S. (hereinafter referred to as: "Complainants") about disclosing their personal data to unauthorized persons by Z. Spółka z o.o. (hereinafter referred to as: the "Company").

In the wording of the above-mentioned the complaints indicated that the Company provides in writing information related to the debt collection activities carried out against them to unauthorized entities that are in no way related to or interested in these activities. The correspondence sent by the Company was not intended to enforce debt repayment, but only to harass and exert mental pressure on the Complainants.

In connection with the above, the Applicants applied for the quotation: "

correcting the information provided by Z. to third parties about my person by sending letters to E., K. N., President [...], J. G. -

[...] apologizing,

no further sharing of my personal data

suspending the transfer of personal data to third parties ".

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office (hereinafter: "the President of the Personal Data Protection Office") determined the following.

Pursuant to the agreement for the assignment of receivables, the Company acquired receivables from P. E. S. confirmed by the judgments of the District Court for W. [...] February 2011 (file reference: [...]) and of [...] June 2013 (file reference [...]).

By letters of [...] and [...] May 2014, the Company disclosed the personal data of the Complainants to the General Council of the H., K., K.N. Association, the President of [...] H. G. with regard to the name, surname and amount of the debt. Above entities were not interested in or related to the enforcement case.

In the course of the proceedings, it was necessary to carry out control activities, which, however, due to the inability to contact persons authorized to represent, were not carried out.

In a letter of [...] June 2016, the Inspector General for Personal Data Protection (reference number [...]) submitted a notification of suspicion of committing a crime pursuant to Art. 49 sec. 1 of the Act on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended, and of 2018, item 138), hereinafter: "the Act". However, the competent Prokuratura Rejonowa W., by decision of [...] September 2017, discontinued the investigation in the case due to the lack of features of a prohibited act. The Inspector General for Personal Data Protection filed a complaint against the decision. The prosecutor's office upheld the appealed decision.

In this factual state, 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 u.o.d.o. 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 of Laws of 2016, item 922, as amended), hereinafter referred to as the "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". 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".

At the time when the event described by the applicants took place, the law was in force. The provision of fundamental importance for the assessment of the legality of the processing of personal data is Art. 23 sec. 1 of the Act, according to which the processing of personal data is lawful when the data controller meets one of the conditions listed in this article, i.e. when: the data subject has consented to it, unless it concerns the deletion of data relating to him, it is necessary to exercise an entitlement or fulfill an obligation resulting from a legal provision, it is necessary for the performance of the contract when the data subject is a party to it or when it is necessary to take action before concluding the contract at the request of the data subject, it is necessary to perform tasks specified by law for the public good, it is necessary to fulfill legally justified purposes pursued by data controllers or data recipients, and the processing does not violate the rights and freedoms of the data subject.

It should be added that these conditions apply to all forms of data processing listed in art. 7 sec. 2 of the Act, including making them available. These conditions are also equal to each other, which means that for the legality of the data processing process, it is sufficient to meet one of them.

In the opinion of the President of the Office, in the discussed case, none of the above conditions has been met. Therefore, it should be stated that the disclosure of personal data regarding debt collection activities against the Complainants in the correspondence sent to the entities indicated in the complaint took place without any legal basis.

Regardless of the above, it should be pointed out that the proceedings conducted by the President of the Office are aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the Personal Data Protection Act. According to this provision, in the event of a breach of the provisions on the protection of personal data, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying, or failure to provide personal data, 3) application of

additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data.

It should be explained that in the circumstances of the case under examination there are no grounds for making any order against the Company. Firstly, the President of the Office does not have any legal instruments that would make it possible to offset the effects of the unauthorized disclosure of personal data of the Complainants. This disclosure is an irreversible fact in the sense that it is not possible to lead to the situation which would have occurred had the impugned infringement not occurred. Moreover, the condition for issuing by the authority the decision referred to in Art. 18 of the Act, there is a violation of the right to personal data protection at the time of issuing the administrative decision. Meanwhile, the evidence presented by the Complainants shows that in the case at hand the disclosure of data to unauthorized entities was of a one-off nature, therefore there are no grounds to assume that the actions questioned by the Complainants will be repeated in the future. The President of the Office is not authorized to issue an order in this case concerning possible unauthorized processing of the Complainants' personal data in the future. It should be emphasized that an administrative decision is a specific and individual act and always concerns a strictly defined, established and current state of affairs at the time of the ruling. The President of the Office is not authorized to issue a decision with regard to future and often hypothetical situations.

It should be added that the President of the Office is also not empowered to issue orders to eliminate the negative effects of infringement of personal rights, in this case to order the Company to send apologetic letters to entities to whom the data were disclosed, as requested by the Complainants. I would like to inform you that if, in the opinion of the Complainants, there was a breach of their personal rights, which, pursuant to Art. 23 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 1025) are in particular health, freedom, honor, freedom of conscience, name or nickname, image, correspondence secret, inviolability of the apartment, creativity scientific, artistic, inventive and rationalizing, they may pursue their claims in this respect by means of a civil action brought before the locally competent common court. According to the content of Art. 24 § 1 and 2 above of the act, the person whose personal interest is threatened by someone else's action, may demand that such action be discontinued, unless it is not unlawful. In the event of an infringement, they may also require the person who committed the infringement to perform the actions necessary to remove its effects, in particular to submit a declaration of appropriate content and in an appropriate form.

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 file an application for reconsideration of the case within 14 days from the date of its delivery 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 Office (address: ul. Stawki 2, 00-193 Warsaw). 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.

2021-04-01