THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 06

February

2019

DECISION

ZSZZS.440.748.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), 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. 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) and Art. 6 sec. 1 lit. c and art. 9 sec. 2 lit. h and i 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 (Official Journal European Union, L 119, May 4, 2016), after conducting administrative proceedings regarding the complaint of Ms MG and Mr BG to share their personal data and the personal data of their underage son I.G. by N. Sp. z o.o. for the State County Sanitary Inspector in G., President of the Office for Personal Data Protection

orders the State Poviat Sanitary Inspector in G. to delete the personal data of Ms M.G. in terms of her telephone number;

as to the remainder, it refuses to accept the application.

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Ms M.G. and Mr. B.G. to provide their personal data and I.G.'s personal data, hereinafter referred to as the Complainants, by N. Sp. z o.o., hereinafter referred to as the Outpatient Clinic, for the State County Sanitary Inspector in G., hereinafter referred to as PPIS.

In the content of the complaint, the complainants indicated that the Clinic provided PPIS with their personal data without their consent. In the letter in question, the complainants indicated that they expected the Inspector General to issue a decision on the matter in question restoring the state before the data were made available by: carrying out an inspection in the Outpatient Clinic, ordering the Clinic to stop sharing data without their consent, data from all PPIS resources and to punish those responsible for the violation.

In the course of administrative proceedings, the President of the Personal Data Protection Office established the following facts:

The applicants, as persons taking care of their minor son, did not comply with the obligation to vaccinate him.

The fact of failure to fulfill the obligation to vaccinate the minor was noted by the representative of the PPIS who carried out the inspection at the Outpatient Clinic in the scope of the implementation of preventive vaccinations in the years 2013-2008. The inspections, according to the submitted explanations, took place on: […] .02.2014, […] .12.2014, […] .12.2016 and […] .07.2017.

During the inspection, PPIS obtained the personal data of the minor I.G. with regard to the data contained in the immunization card, i.e. name, surname, address, date of birth of the minor, name, surname and telephone number of the complainant.

Due to the failure by the Complainants to fulfill the obligation to vaccinate their underage daughter, PPIS recorded the personal data contained in the immunization card of minor I.G. by making a photocopy of them in order to enforce the Complainants' obligation to vaccinate the minor.

In order to enforce the implementation of the vaccination obligation, PPIS obtained from the Mayor of [...] the personal data of the Complainants in the scope of: first names, surnames, address of residence, dates of birth, PESEL numbers and personal data of the minor in terms of the PESEL number and the address of residence.

The clinic, due to its obligation to report on the preventive vaccinations carried out, provided the minor's data (in the scope of name, surname, date of birth, PESEL number) to PPIS in reports on: [..]. 04.2015, […] .07.2014, […] .10.2014, […] .01.2015, […] .04.2015, […] .07.2015, [...]. 10.2015, […] .01.2016, […] .04.2016, […] .07.2016, […] .10.2016, […] .10.2016, […] .01.2017, […] .04.2017, […] .07.2017, […] .10.2017 and […] .01.2018

After reviewing the entirety of the evidence collected in the 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: the Act of 2018, i.e. 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, 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 as

amended), 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 2017, item 1257 and of 2018, item 149), hereinafter referred to as: kpa All activities undertaken by the Inspector General before May 25, 2018 remain effective.

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). At the same time, this authority shares the position expressed by the Supreme Administrative Court in the judgment of 25 November 2013, issued in the case no. act I OPS 6/1, in which the above-mentioned The court indicated the following: "In administrative proceedings governed by the provisions of the Code of Administrative Procedure, the rule is that the public administration body settles the matter by issuing a decision that resolves the matter as to its essence, according to the legal and factual status as at the date of issuing the decision."

The President of the Personal Data Protection Office must assess whether the questioned process of personal data processing as at the date of the administrative decision is lawful. It should be emphasized that two circumstances are decisive for the decision that must be issued in the present case. First of all, it should be noted that obtaining data by PPIS during the inspection should be considered as providing personal data by the Clinic for PPIS. In addition, it should be noted that the disclosure was a one-off and accomplished event, which took place during the period when the Act of 1997 was in force, and therefore the provisions of this Act are applicable to the assessment of the legality of this situation. Secondly, it should be noted that the personal data provided are still processed by the PPIS, therefore the provisions in force at the time of issuing the decision of the case, i.e. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, apply to this process. 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 (Official Journal of the European Union, L 119, May 4, 2016), hereinafter referred to as: GDPR.

When referring to the provision of data by the Clinic for PPIS, it should be noted that any form of personal data processing, the so-called "Ordinary" should have found support in one of the enumerated in Art. 23 sec. 1 of the Act of 1997, the prerequisites for the legality of this process. However, the processing of personal data, the so-called "Sensitive", the exhaustive catalog of which was defined by Art. 27 sec. 1 of the 1997 Act, it should have been based on one of the premises listed in Art. 27 sec. 2 of the Act of 1997. The prerequisites for the legality of personal data processing are exhaustively listed in the above-mentioned provisions. Each of them was autonomous and independent. This means that these conditions were equal, and the fulfillment of at least one of them constituted the lawful processing of personal data. It should be pointed out that, irrespective of the consent of the data subject, the processing of his personal data was permissible, inter alia, when it was necessary to exercise the right or fulfill the obligation resulting from the law in the case of ordinary data processing (Article 23 paragraph 1 point 2 of the 1997 Act). In the case of sensitive data, the processing of personal data without the consent of the data subject was allowed, inter alia, in the event that a special provision of another act allowed for the processing of such data without the consent of the data subject and created full guarantees of their protection (Article 27 (2) (2) of the Act of 1997).

Pursuant to Art. 5 sec. 1 point 1 sub-point b of the Act of December 5, 2008 on promoting and combating infections and infectious diseases in humans (Journal of Laws of 2008, No. 234, item 1570), hereinafter referred to as: u.z.z. persons staying on the territory of the Republic of Poland are obliged to undergo preventive vaccinations under the terms of this Act. In the case of a person without full legal capacity, the responsibility for the fulfillment of this obligation is borne by the person who exercises legal custody or actual care of a minor or helpless person, in accordance with art. 3 sec. 1 point 1 of the Act of November 6, 2008 on Patient Rights and Patient's Rights Ombudsman (Journal of Laws of 2017, item 1318, as amended).

However, it should be taken into account that the State Sanitary Inspection may obtain personal data of persons who refrain from carrying out preventive vaccinations in two ways: by making them available by the Clinic in the quarterly report on the vaccination status of persons covered by the prophylaxis or by carrying out control activities in the entity carrying out preventive vaccinations. .

Referring to the transfer of personal data by the Clinic to the PPIS in the form of quarterly reports, it should be noted that in accordance with art. 17 sec. 8 UZZ, persons carrying out preventive vaccinations keep medical records on compulsory

vaccinations, keep immunization cards, make entries confirming vaccination, prepare reports on the vaccination status and prepare reports on the vaccination status of persons covered by preventive health care, which are submitted to the relevant State County Inspector Sanitary. Article 17 (1) 10 z.z. indicates that the report template is specified in the Regulation of the Minister of Health of 18 August 2011 on compulsory preventive vaccinations (i.e. Journal of Laws of 2018, item 753), hereinafter referred to as: roso, which requires a list of people who have not avoided from preventive vaccinations (Annex 4, second section roso). It should be emphasized that the above-mentioned regulation concerns technical and organizational issues allowing to systematize the circulation of the documents described in it. However, with regard to the acquisition of data during the inspection, it should be noted that pursuant to Art. 1, art. 2 and art. 5 sec. 3 of the Act of March 14, 1985 on the State Sanitary Inspection (Journal of Laws of 2017, item 1261, as amended), hereinafter referred to as the PIS Act, the powers of the State Sanitary Inspection include sanitary supervision, in particular over the timely implementation of the obligation of preventive vaccinations. Additionally, pursuant to Art. 25 sec. 1 of the PIS Act, the State Sanitary Inspection is authorized to conduct inspections during which, pursuant to Art. 25 sec. 1 point 3 of the PIS Act, has the right to demand the presentation of documents and disclosure of all data.

As indicated in the explanations, PPIS obtained personal data about the minor I.G. and fulfillment of the obligation to vaccinate him, both during inspections carried out in the Clinic, as well as through quarterly reports submitted by the Clinic to the PPIS. In view of the above, pursuant to Art. 23 sec. 1 point 2 and art. 27 sec. 2 point 2 of the Act of 1997 in connection with joke. 25 sec. 1 of the PIS Act, Art. 5 sec. 1 items 1-3 and art. 17 sec. 8 point 2 of the Act on obtaining data on the minor's name, surname, address and date of birth, as well as on the name and surname of the minor's mother, Mrs. M.G., should be considered justified and in accordance with applicable regulations.

At the same time, it should also be pointed out that in the scope of personal data obtained by PPIS during the inspection there was also a telephone number to Ms M.G .. It is necessary to point out that compliance with the statutory obligation to undergo protective vaccinations against infectious diseases under Art. 5 sec. 1 point 1 point b of the Act on Public Procurement Law, was secured by administrative coercion (also: Provincial Administrative Court in Kielce, judgment of February 21, 2013, issued in the case No. II SA / Ke 7/13). Pursuant to Art. 3 § 1 in connection with joke. 2 §1 point 10 of the Act of 17 June 1966 on enforcement proceedings in administration (Journal of Laws of 2014, item 1619, as amended), hereinafter referred to as: u.p.e.a. or the Act on Enforcement Proceedings, administrative enforcement shall apply to non-pecuniary obligations remaining

within the competence of government administration and local government bodies or submitted for administrative enforcement on the basis of a special provision. Within the meaning of Art. 1a point 13 u.p.e.a. the creditor is the entity entitled to demand the performance of the obligation or its security in administrative enforcement or security proceedings (here: PPIS), while in accordance with Art. 5 §1 point 2 u.p.e.a. entitled to request the performance by way of administrative enforcement of the obligation specified in art. 2 §1 point 10 of the Act on there is a body or institution directly interested in the performance of the obligated obligation or appointed to supervise the performance of the obligation (see also the judgment of the Supreme Administrative Court of June 12, 2014, issued in the case No. II OSK 1312/13; judgment of the Provincial Administrative Court) in Bydgoszcz of June 9, 2015 issued in the case with reference number II SA / Bd 423/15). Therefore, it should be recognized that the scope of data obtained by the PPIS in order to enforce the obligation to vaccinate should contain the data necessary for the appropriate branch of the State Sanitary Inspection to send a reminder to comply with the vaccination obligation and to take further enforcement actions in the event of non-compliance with the obligation. It should be emphasized that the data obtained by the PPIS and made available to it must also be sufficient to effectively enforce the vaccination obligation, under which the creditor (here: PPIS) draws up an enforcement title. The scope of these data is governed by Art. 27 of the Act on Enforcement Proceedings. Pursuant to Art. 27 § 1 point 2 and 3 of the Act on enforcement, the writ of execution should include the name, surname, address, PESEL number of the person liable and the content of the obligation to be enforced. In view of the above, the telephone number to the complainant should be considered redundant for the effective administrative enforcement of the vaccination obligation and, therefore, should not be processed by PPIS. Due to this, the President of the Office decided to delete the Complainant's personal data by the PPIS in this regard, and refused to order the PPIS to delete them with regard to the remaining data.

In line with the above analysis, one should distinguish between the ways in which the Complainants' personal data was obtained by PPIS. In the case in question, the Clinic made the access available in connection with the reporting obligation imposed on it and in connection with activities undertaken ex officio by the PPIS. With regard to disclosure through reports, it should be noted that Art. 17 sec. 8 point 2 of the Act on should be considered as a provision allowing for the acquisition of sensitive personal data by PPIS (i.e. information on immunization of minor I.G.). In addition, with regard to activities undertaken by the PPIS ex officio, it should be noted that in accordance with the provisions of Art. 25 sec. 1 point 3 of the PIS Act, which allows the PIS to request the presentation and disclosure of all data, it results in the right to process this data. In

both cases, the provisions granting the PPIS the competence to collect and process personal data of persons subject to the obligation of preventive vaccinations also apply. The legislator provided for these powers for the PPIS in order to enable effective supervision over the implementation of the vaccination obligation in accordance with Art. 5 sec. 1 point 1 lit. b u.z.z. in connection with joke. 3 § 1 u.p.e.a. The disclosure of the Complainants' personal data by the Clinic for PPIS was based on ordinary data in art. 23 sec. 1 point 2, and for sensitive data in art. 27 sec. 2 point 2 of the 1997 Act. Moreover, the PPIS, pursuant to Art. 1, art. 2 and art. 5 sec. 3 and art. 25 sec. 1 of the PIS Act, is entitled to carry out inspections and to obtain personal data by requesting access to all data and documents from the inspected entity.

Referring to the obtaining of personal data of the Complainants and their underage son from the Mayor of the City [...], it should be noted that pursuant to Art. 46 sec. 1 point 1 of the Act of 24 September 2010 on the population records (Journal of Laws of 2018, item 1382), hereinafter referred to as the Act on the population records, data from the PESEL register and the register of residents to the extent necessary to perform their statutory tasks are made available to public administration bodies. As indicated above, the statutory tasks of the State Sanitary Inspection include supervision over the implementation of preventive vaccinations, therefore the application submitted to the Mayor [...] was justified. Moreover, taking into account the above-described scope of data necessary to carry out an effective administrative enforcement of the vaccination obligation (i.e. data necessary to issue an enforcement title), obtaining by the PPIS from the Mayor of [...] the personal data of the Complainants in the scope of: names, surnames, address, dates of birth, PESEL numbers and personal data of the minor in terms of the PESEL number and address should be considered in accordance with art. 23 sec. 1 point 2 and art. 27 sec. 2 point 2 of the Act of 1997. It should also be indicated that these data were obtained and processed for a specific purpose - enforcement of the implementation of control vaccinations, and their scope was necessary for the effective implementation of this goal by issuing an enforcement title.

However, referring to the ongoing process of processing the Complainants' data by the PPIS, it should be noted that the GDPR defines the obligations of the data controller, including the processing of personal data, in compliance with the conditions set out in the Regulation. Art. 6 sec. 1 of the GDPR, according to which data processing is allowed only if one of the conditions set out in this provision is met. The catalog of premises listed in Art. 6 sec. 1 GDPR is closed. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are, in principle, equal, and therefore the fulfillment of at least one of them determines the lawful processing of personal data. As a consequence, the

consent of the data subject is not the only basis for the processing of personal data, as the data processing process will be consistent with the Regulation also when the data controller demonstrates that another of the above-mentioned conditions is met. Regardless of the consent of the data subject (Article 6 (1) (a) of the GDPR), the processing of personal data is permitted, inter alia, when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (c) of the GDPR) GDPR). Pursuant to Article 5 para. 3 of the PIS Act, the competences of the PPIS include determining the scope and dates of compulsory preventive vaccinations and supervising the enforceability of the obligation to perform preventive vaccinations. Moreover, due to the special category of data (so-called "sensitive" data) processed in the present case, Art. 9 of the GDPR, which enumerates the situations in which such data may be processed. Pursuant to Art. 9 GDPR, the processing of sensitive data is only allowed if one of the conditions of Art. 9 sec. 2 GDPR. As possible prerequisites for processing, this provision mentions, inter alia, the processing of data for the purposes of preventive health care (...) on the basis of EU law or the law of a Member State, subject to paragraph 3 (h) as well as processing necessary for reasons of public interest in the field of public health on the basis of European Union or Member State law (letter i). In the present case, both Art. 9 sec. 2 lit h, in connection with the prophylactic use of vaccines, as well as Art. 9 sec. 2 lit. and in view of the public interest in preventing infectious disease epidemics. Both of these grounds presuppose the existence of a legal basis in the form of a regulation at the European Union level or adopted by a Member State of the European Union. In the Republic of Poland, such provisions are contained in the Act on encouraging and combating infections and infectious diseases in humans.

The above means that the processing of personal data by PPIS in the scope of information about undergoing preventive vaccinations is based on the premises specified in Art. 9 sec. 2 lit. h and GDPR, while in the scope of other personal data concerning the complainant and her son - in art. 6 sec. 1 lit. c GDPR.

It should be noted here that the administrative procedure conducted by the President of the Office serves to control the compliance of data processing with the provisions on the protection of personal data and is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act.As it follows from the wording of the quoted provision, in the event of a breach of the provisions of the Act, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders restoration of the legal status, and in particular removal of the deficiencies (point 1) , supplementing, updating, rectifying, disclosing or not providing 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).

Referring to the Complainants' request to carry out an inspection in the Outpatient Clinic, it should be clarified that the competences of the President of the Personal Data Protection Office (as well as earlier the competences of the Inspector General for Personal Data Protection) include carrying out such an inspection, but the authority undertakes such actions ex officio , not upon request. Comprehensive control activities regarding the processing and protection of data by a specific data administrator may therefore be undertaken by the President ex officio, after receiving information about the illegal activities of the entity and after making a preliminary assessment of the legitimacy of the charges against him, but the decision to carry out these activities is made by the authority on its own based on a reasonable suspicion of violating the provisions of the GDPR.

In this factual and legal state, the President of the Personal Data Protection Office adjudicated 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 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.

2019-06-19