

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

January

2019

## DECISION

ZSOŚS.440.42.2018

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096) and art. 12 point 2, art. 22, art. 23 sec. 1 point 5 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 joke. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), after conducting administrative proceedings regarding the complaint of Mrs. M. S., residing in in N., for failure to disclose the personal data of the perpetrators of the road incident and the personal data of the police officers involved in the above incident by the Municipal Police Commander in C.,

I discontinue the proceedings

## JUSTIFICATION

On [...] October 2017, the Office of the Inspector General for Personal Data Protection (now: "Office for Personal Data Protection") received a complaint from Ms MS (hereinafter: "the Complainant") about the failure to disclose the personal data of the perpetrators of the road accident that took place [ ...] and the personal data of the police officers involved in the above incident by the Municipal Police Commander in C. (hereinafter referred to as: "the Commander"). As indicated by the complainant, these data are necessary for her to initiate court proceedings. In support of the complaint, the complainant submitted that as a result of the above-mentioned In the accident, she suffered permanent health impairment, which makes it impossible for her to function normally in everyday life. Therefore, it intends to bring an action for redress against the police officers and to submit a notification of suspected crime. As confirmation of the above, she attached to the complaint a copy of the medical records.

The complainant requested that the President of the Personal Data Protection Office undertake actions consisting in issuing a decision ordering the Commandant to disclose the requested data. By letters of [...] October 2017, [...] October 2017, [...] October 2017 and [...] October 2017, [...] October 2017, the applicant requested the Municipal Police Headquarters in C . for a

memo describing the findings of the road incident that occurred [...] and the disclosure of personal data, including addresses and service of police officers who arrived at the scene of the accident.

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 findings.

In a letter of [...] November 2017, the Inspector General for Personal Data Protection asked the Commander, who is the administrator of personal data, to comment on the content of the complaint and to provide written explanations. The Inspector General informed the Complainant about the above activity (letter of [...] November 2017 in the case file). On [...] December 2017, the Office of the Inspector General for Personal Data Protection received a letter from the Commander of answers. On [...] October 2017, the Head of the KMP Road Traffic Department in C. informed the complainant that the official documentation had been checked, but no information on the road accident with [...] was found (sign: [...]). On [...] October 2017, M. S. communicated by phone to a police officer of the Municipal Police Headquarters in C. her reservations regarding the above-mentioned letters and indicated additional data on the road accident (a note from the interview was documented in the register of admissions of applicants of the Municipal Police Headquarters in C. and attached to the case files). On [...] October 2017, the complainant was received by the Commander-in-Chief and filed "an application for the identification and disclosure of personal, address and official data of police officers", and asked to take action in connection with the disappearance of files at the Municipal Police Headquarters in C., related to the accident in question (a note from the interview and copies of the applicant's letters are in the case files). Supplementary correspondence in the form of e-mails was sent by the complainant on [...] October 2017 and [...] October 2017 (copies of the letters in the case file). Therefore, the list of documents submitted to the archives related to road accidents was re-verified. In the "register of investigations and investigations" located in the file repository, established [...] and completed [...] and the correspondence log, no information on the road incident occurred was found. Only in the "book of events kept by the duty officer of the police unit" was found, under item [...], a record of a reported road collision and the brands and registration numbers of vehicles involved in the incident. The further part of the entry, as indicated by the Commander, shows that as a result of the incident, the persons or the person were transported to the hospital, and in order to establish the injuries suffered by these persons and properly classify the event, a police patrol was sent to the hospital. In addition, the data of the police officers on duty on the day of the road accident and the data of officers who were referred to the hospital for the purpose of making the above arrangements were established. On the

other hand, as a result of the analysis of the entries in the correspondence journal of the Road Traffic Department of the District Police Headquarters in C., started [...] and ended [...] according to the Commander, personal data in the form of the name and surname of the perpetrator of a road accident, classified as an offense under Art. 86 § 1 of the CC. The data contained in the information systems available to the police also did not help in reaching a closer look. On [...] October 2017, a "traffic incident certificate" ([...]) was issued containing the information obtained. In turn, [...] in October 2017, a letter was sent to the complainant with the names and surnames of policemen performing their duties in the event of a road accident and their personnel IDs. The complainant's letters in the part concerning the announcement of the positions of these policemen were forwarded to the Provincial Police Headquarters in K., which was the legal successor of the Provincial Police Headquarters in C .. On [...] November 2017, the applicant submitted another letter to the Municipal Police Headquarters in C. in which she accused the Commander of obstructing the obtaining of the requested data. After re-checking in the file repository, the numbers of police officers' ID cards were obtained, which were provided to the complainant in a letter of [...] November 2017 (letter [...] in the case files). The Commandant indicated that the applicant had been provided with information about the participants of the road incident and personal data of police officers, to the extent that the Municipal Police Headquarters in C .. the police officers switched to retirement benefits, therefore the administrator of their personal data is the Pension and Pension Institution of the Ministry of Interior and Administration, to which the complainant should apply.

Moreover, in addition to the evidence, attached to the letter of [...] October 2018, the Commandant sent a copy of the letter of [...] December 2017, constituting a response to the allegations made by the applicant against the Commandant, relating to obstruction of access to written requested data. The letter indicated that the applicant had received correspondence and a certificate of factual findings made on the basis of the available documentation at the unit, and that she had been informed by telephone and personally by police officers about the findings. The letter of October 2018 was also accompanied by copies of the applicant's notification of a suspected crime and further letters related to the failure of police officers to fulfill their duties in connection with the actions taken at the scene of the road accident with the applicant's participation, including a copy of the decision to refuse to initiate an investigation of [...] March 2018, issued by the Assessor of the District Prosecutor's Office in L. The reason for the refusal was the statute of limitations on the punishability of the act.

It should be noted here that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data, i.e. May 25, 2018, the Inspector General for Personal Data Protection became the President of the Office for Personal Data

Protection. Pursuant to Art. 160 of this Act, the proceedings conducted by the Inspector General for Personal Data Protection, 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 in accordance with the principles set out in the Code of Civil Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

Referring to the complainant's request to order the disclosure of personal data by the Municipal Police Commander in C. perpetrators of this event, it should be pointed out that, as a result of the investigation conducted in the case, it was found that the complainant had access to the data contained in the files still in existence at the disposal of the entity. It should be noted that the passage of more than 20 years from the incident makes it impossible to recreate all the data of persons involved in the road incident. The data controller provided the complainant with personal data in the field of names and surnames, numbers of service cards and personnel identifiers of police officers performing official duties at the aforementioned the road incident, as well as the name and surname of the perpetrator of the incident, as well as registration numbers and brands of vehicles involved in it. The above results from the letters attached to the files, among others of [...] October 2017, of [...] October 2017, of [...] November 2017. At the same time, he indicated that the private addresses of police officers cannot be disclosed due to the privacy of a natural person. The position is justified by the fact that the addresses of police officers are not public information. At the same time, it could lead to the violation of the constitutional right to privacy of the above-mentioned people. In connection with the above, pursuant to the provisions of Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, hereinafter referred to as the Code of Administrative Procedure, when the proceedings for any reason became redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, respectively, in whole or in part. The doctrine indicates that: "the redundant nature of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Civil Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance. The prerequisite for discontinuation of the proceedings may exist even before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the proceedings, i.e. in a case already pending before the administrative authority "(B. Adamiak, J. Borkowski," Kodeks administracyjny. Komentarz, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491).

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative 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 situation would make it defective, having a significant impact on the result of the case. . The groundlessness of the proceedings may also result from a change in the facts of the case.

The procedure conducted by the President of the Office is 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. The condition for issuing by the authority the decision referred to in the above-mentioned provision is the existence of a breach of the right to the protection of personal data at the time of issuing the administrative decision.

The Supreme Administrative Court in its judgment of November 19, 2001 (file reference number II SA 2702/00) stated: "(...) since in the course of the (...) administrative proceedings conducted (...) the state of violation of the law to which the decision was to be subject was lifted, this proceeding has become pointless. In the light of the provision of Art. 18 sec. 1 of the Act, initiated by GIODO (currently: "PUODO") ex officio or at the request of the person concerned, the proceedings regarding the violation of the provisions on the protection of personal data may only end with the issuance of an administrative decision ordering the data controller to restore the lawful state, in particular: to remove the deficiencies, supplementing, updating, rectifying, disclosing or not sharing personal data, applying additional security measures to the collected data, suspending the transfer of personal data to a third country, securing data or transferring it to other entities, deleting personal data. In the facts of the case at hand, no such decision could have been issued, as the violation had previously been restored to the lawful state (...)" .

In a situation where the personal data of the police officers, the perpetrator of the incident, as well as the registration numbers and brands of vehicles involved in the incident, as requested by the complainant, were made available to her by the data controller from the collections held by him, the legality examination in the context of determining the possible existence of

premises for the formulation of an order, referred to in art. 18 sec. 1 of the act would of course be redundant.

In this factual and legal state, the President of the Personal Data Protection Office resolved as at the beginning.

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. The party has the right to waive the right to request a retrial. The waiver of the right to submit an application for reconsideration makes the decision final and binding. 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.

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