THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

March

2019

DECISION

ZSZZS.440.842.2018

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), art. 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), art. 18 point 1 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922) in connection with joke. 15 sec. 3 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, the General Data Protection Regulation (Journal of Laws UE L 119 of 04/05/2016, as amended), after conducting administrative proceedings regarding the application of Ms JC, represented by the legal adviser of Mr. TM, to disclose her personal data contained in her personal files by Mr. economic under the name of E., President of the Office for Personal Data Protection

orders Mr. S. S., running a business under the name of E., to fulfill the obligation specified in Art. 15 sec. 3 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, the General Data Protection Regulation (Journal of Laws UE L 119 of 04/05/2016, as amended) by providing the complainant with a copy of her personal data contained in her personal files.

Justification

The Office of the Inspector General for Personal Data Protection (now the Office for Personal Data Protection) received a request from Ms JC (hereinafter referred to as the Complainant), represented by legal counsel, Mr. . (hereinafter referred to as the Employer).

In the content of the application, the complainant stated the following quotation: "(...) when the employer refuses to disclose the personal data contained in the employee's personal file, the employee's request for personal data to be provided by the

employer is justified in order to verify their content and correct processing pursuant to Art. 32 sec. 1 point 3 of the 1997 Act ”.

The complainant also raised the quotation "there is no doubt that the employer did not disclose the data contained in the personal files, which made it impossible to verify the correctness of their processing".

In the course of the proceedings conducted in this case, the President of the Personal Data Protection Office (hereinafter referred to as the President of the Personal Data Protection Office) determined the following:

The applicant was employed by the Employer [...] from [...] February 2012 to [...] July 2012.

On […] August 2014, the complainant requested access to her personal data contained in her personal file.

In response to the request for disclosure of the complainant's personal data, by letter of [...] September 2014, the employer sent her a list of documents that were in her personal files and refused to see her personal files.

By letter of [...] October 2014, the complainant again requested access to her personal data contained in her personal files with the Employer.

In the letter of [...] November 2014, the employer again sent the complainant a list of her documents in her personal files.

In her complaint to the President of the Personal Data Protection Office, the complainant alleged breach by the Employer of the provisions on the protection of personal data by failing to fulfill the obligation under Art. 32 (1) (3) of the 1997 Act

In this factual state, the President of the Personal Data Protection Office considered the following.

At the outset, 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), i.e. on May 25, 2018 ., The Office of the Inspector General for Personal Data Protection has become the Office for Personal Data Protection. 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 (Journal of Laws of 2016, item 922 and 2018, item 138) (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), hereinafter referred to as Kpa. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

Considering that the request for disclosure of personal data by the Complainant to the Employer, as well as the request submitted to the Inspector General for Personal Data Protection, in connection with the Employer's refusal to fulfill the request

for disclosure of her personal data, took place during the effective period of the Act of 1997, in accordance with the wording of art. 160 sec. 2 of the Act of 2018, the provisions of the Act of 1997 will apply to these proceedings. Moreover, due to the fact that as at the date of the decision, the Employer still did not comply with the complainant's request, the issue of disclosing the complainant's personal data should be assessed in terms of the provisions of the Regulation of the European Parliament and Council (EU) 2016/697 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 (Journal of Laws UE L 119 of 04.05. 2016, page 1, as amended), hereinafter referred to as the GDPR.

Pursuant to the provisions of Art. 94 sec. 9a of the Act of June 26, 1974, the Labor Code (Journal of Laws of 2018, item 917), the employer is obliged to keep and store in paper or electronic form documentation on matters related to the employment relationship and personal files of employees. Accordingly, Mr. S. S., running a business under the name of E., is the administrator of the complainant's personal data contained in her personal files.

It should be pointed out that, pursuant to Art. 24 sec. 1 point 3 of the Act of 1997, in the case of collecting personal data from the data subject, the data controller was obliged to inform that person about the right to access their data and to correct them. It should be emphasized that the term "the right to access your data" has been replaced by the earlier "right to access your data" pursuant to Art. 1 point 12 of the Act of [...] January 2004 amending the Act on the Protection of Personal Data and the Act on Remuneration of Persons Holding State Managerial Positions (Journal of Laws No. 33, item 285) due to the need to standardize the terminology in the Act with used in the Constitution of the Republic of Poland and Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of persons with regard to the processing of personal data and on the free movement of such data. As indicated in the doctrine: "The above change means that the data subject has no right to physical access to data carriers (traditional or IT), but only access to the content of information, which can be carried out in various ways, for example using a screen monitor "(A. Drozd," Act on the Protection of Personal Data. Comment. Patterns of letters and regulations ", Warsaw 2008, Wydawnictwo Prawnicze Lexis Nexis, 4th edition, pp. 504), as well as that:" The new wording of the provision in accordance with the intention of the legislator, it is to emphasize that the data subject is not entitled to access the media containing data, but only the right to access the content of the data about himself. This does not mean, however, that the exercise of this right cannot take place by providing a medium containing data, it only means that the administrator is not obliged to provide access to data carriers (documents, IT systems), it may limit itself to

providing the content of the data itself "(J. Barta, P. Fajgielski, R. Markiewicz, "Personal data protection. Comment", Wolters Kluwer Polska Sp. Z oo, 4th edition, Krakow 2007, p. 483).

In connection with the above, it should be pointed out that pursuant to Art. 32 sec. 1 point 3 of the Act of 1997, each person had the right to control the processing of data concerning him, contained in data files, and in particular the right, inter alia, to provide the content of this data in an intelligible form. The rights of persons whose data were processed in files, as set out in art. 32 of the 1997 Act, the data controllers' obligation specified in Art. 33 paragraph 1 of the Act of 1997. It stipulated that, at the request of the data subject, the data controller was obliged, within 30 days, to inform about his rights and to provide, regarding his personal data, the information referred to in Art. 32 sec. 1 items 1-5a of the 1997 Act. Pursuant to par. 2 of this provision, at the request of the data subject, the information referred to in para. 1 shall be granted in writing.

The information obligation provided for in Art. 33 of the 1997 Act was aimed at providing persons whose personal data were processed with access to information about the circumstances of their processing. As indicated by the Supreme Administrative Court in the judgment of 30 July 2009 (file reference number I OSK 1049/08): "There should be no doubt that failure to comply with this obligation is a breach of the provisions of this Act [on the protection of personal data] within the meaning of Art. . 18, entitling and obliging the Inspector General for Personal Data Protection to issue an administrative decision on ordering the restoration to legal status, i.e. in the situation specified in Art. 33 paragraph 1 and 2 of this Act - in the matter of ordering the administrator of personal data to fulfill the information obligation referred to in this article ".

The evidence in the case shows that the Employer refused to provide the complainant with the information she requested on two occasions. Referring to the position of the Employer, referring to the fulfillment of the information obligation by sending the complainant a list of documents in the employee's personal files, it should be emphasized that the employer did not provide the complainant with the list of personal data contained in her personal files, but only a list of documents containing the complainant's personal data, which means failure to fulfill the obligation under Art. 32 sec. 1 point 3 of the Act of 1997.

Moreover, in the case there are no circumstances enumerated in Art. 34 above. of the Act of 1997, constituting the basis for the data controller to refuse to provide the data subject with the information referred to in Art. 32 sec. 1 points 1-5a of the 1997 Act, due to the need to protect other important interests. Indeed, it cannot be considered that the information provided by the Employer to the Complainant would result in the disclosure of messages containing classified information (point 1), a threat to the state defense or security, human life and health, or public safety and order (point 2), a threat to the basic economic or

financial interest of the state (point 3), significant infringement of the personal rights of data subjects (in this case, the complainant) or other persons (point 4).

To sum up, in the opinion of the President of the Personal Data Protection Office, the Employer unjustifiably refused to disclose the requested personal data to the Complainant, thus preventing her from exercising her rights. As it was established in the course of the proceedings, the complainant was entitled to obtain personal data contained in her personal files at the former Employer's under Art. 32 sec. 1 point 3 of the Act of 1997. It should also be emphasized that the applicant's right to possess the above-mentioned personal data remains valid under the GDPR. According to Art. 15 sec. 3 GDPR, the controller provides the data subject with a copy of the personal data being processed. For any subsequent copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. If the data subject requests a copy by electronic means and, unless otherwise indicated, the information is provided in a commonly used electronic form.

It should be indicated that providing a copy of the data contained in the employee documentation, in accordance with Art. 15 sec. 3 GDPR, is not tantamount to the obligation to provide data in a form appropriate for sharing employee documentation. The employer who is the administrator is also not obliged to provide the person concerned with the medium on which personal data are processed and data that do not constitute personal data within the meaning of art. 4 point 1 of the GDPR and do not apply to the applicant. Fulfilling the obligation resulting from art. 15 sec. 3 of the GDPR, the controller may merely indicate the content of the data relating to the person, excluding other information contained on the medium.

Fulfillment of the obligation specified in Art. 15 sec. 3 GDPR can therefore be implemented both by making a copy or a copy of a document (medium) containing personal data and other data, and by providing the entitled person with the content of his personal data, excluding information contained in the medium, which is not personal data within the meaning of art. 4 point 1 of the GDPR. In the case of sharing copies of personal data processed in employee documentation, the content of the data is of primary importance. The GDPR does not use the concept of sharing copies of documents containing personal data, but uses the concept of data copies.

Pursuant to Art. 18 sec. 1 point 1 of the Act of 1997, in the event of a breach of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the lawful state, and in particular the removal of deficiencies.

In view of the above, it is appropriate for the President of the Personal Data Protection Office to exercise the power specified in

Art. 18 sec. 1 point 1 of the 1997 Act and ordering the Employer to remedy deficiencies in the processing of the complainant's personal data by fulfilling the obligation under Art. 15 sec. 3 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 the right to assistance, including exemption from court costs.

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