

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 11

July

2019

DECISION

ZSZZS.440.790.2018

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) and Art. 6 sec. 1, art. 58 sec. 2 lit. b of the Regulation of the European Parliament and of the Council (EU) 2016/679 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 of the European Union , L 119, May 4, 2016), after conducting administrative proceedings regarding the complaint of Mrs. BS about irregularities in the processing of her personal data by the Primary School based in W., consisting in providing her personal data in the field of name, surname and address of residence to entities third, the President of the Personal Data Protection Office gives a reminder to the Primary School in W. for irregularities in the processing of personal data, consisting in violation of art. 6 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 (Official Journal of the European Union , L 119, May 4, 2016) by posting on the notice board in the teachers' room a letter of [...] May 2018, containing the personal data of Mrs. BS in the field of name, surname and address.

Justification

The Office for Personal Data Protection received a complaint from Ms BS (hereinafter referred to as the Complainant) about irregularities in the processing of her personal data by the W. third.

In the content of the complaint, the complainant requested that the school should take action under the competences of the President of the Personal Data Protection Office due to the e-mail correspondence of [...] the applicant's home address.

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 is employed as a teacher at the School.

By letter of [...] May 2018, the applicant, together with three persons, notified the National Prosecutor's Office, the Ministry of Justice, the Ministry of National Education and [...] the Voivodship Office about media references regarding possible abuses regarding the subsidy for feeding students. In the content of the letter addressed to the above-mentioned authorities have published the complainant's personal data in the scope of her name, surname and address.

On [...] June 2018, the above-mentioned a letter containing the applicant's personal data was posted by the school principal on the notice board in the teachers' room.

The complainant's personal data was removed from the notice board.

In this factual state, the President of the Personal Data Protection Office (hereinafter referred to as the President of the Personal Data Protection Office) considered the following.

In this case, the currently applicable provisions on the protection of personal data, i.e. 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 of the European Union, L 119, May 4, 2016), hereinafter referred to as GDPR.

In addition, 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., EI / 2012). Moreover, in the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07, the Supreme Administrative Court stated that "when examining [...] the legality of personal data processing, GIODO is obliged to determine whether, as at the date of issuing the decision in the case, the data of a specific entity are processed and whether it is done in a lawful manner ".

Pursuant to Art. 4 sec. 7 GDPR, the data controller is a natural or legal person, public authority, unit or other entity that independently or jointly with others determines the purposes and means of processing personal data; If the purposes and means of such processing are specified in Union law or the law of a Member State, the controller may also be designated under Union law or the law of a Member State, or specific criteria for his appointment may be laid down. Under Art. 24 sec. 1 GDPR, the controller of personal data, taking into account the nature, scope, context and purposes of processing as well as the risk of violating the rights or freedoms of natural persons of varying probability and seriousness, implements appropriate technical and organizational measures so that the processing takes place in accordance with the GDPR and to be able to demonstrate it. These measures are reviewed and updated as necessary.

Based on the collected evidence, it should be stated that the School provided the complainant's personal data in the scope of her name, surname and address by posting a letter containing the above-mentioned data of the complainant on the board in the teachers' room. The applicant provided evidence in the form of a printout of a photo showing a board on which a letter was displayed. The school, in turn, indicated in the submitted explanations that the letter was not displayed at present. In the opinion of the President of the Personal Data Protection Office, the above-mentioned the circumstances raised by the Complainant should therefore be considered proven, ie that the access to the Complainant's personal data in the form in question was disclosed in the indicated form, but is currently not being continued.

It should be pointed out that the GDPR defines the obligations of the data controller, which include the processing of personal data in compliance with the conditions set out in the GDPR. Art. 6 sec. 1 GDPR, according to which data processing (including sharing) is allowed only if one of the conditions indicated 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 compliant with the GDPR 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 permissible when it is necessary for the performance of a contract to which the data subject is a party, or to take action at the request of the data subject, to whom the data relate, before concluding the contract (Article 6 (1) (b) of the GDPR), when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (c) of

the GDPR), when the processing is necessary to protect vital interests of the data subject or another natural person (Article 6 (1) (d) of the GDPR), when processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority entrusted to the controller (Article 6 (1) (b) of the GDPR) 1 letter e of the GDPR), when 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 they have the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child (Art. 6 sec. 1 lit. f GDPR).

In the present case, none of the above-mentioned the conditions set out in Art. 6 sec. 1 GDPR. In particular, as unequivocally clear from the complaint, the School did not have the complainant's consent to do so, so the basis for the disclosure in question was not Art. 6 sec. 1 lit. a GDPR. The situation specified in Art. 6 sec. 1 lit. b of the GDPR, because the School has not demonstrated that the disclosure is necessary for the performance of the contract to which the data subject is party, or to take action at the request of the data subject prior to entering into the contract. The School was also not under a legal obligation, for the fulfillment of which it was necessary to provide the complainant's data (Article 6 (1) (c) of the GDPR). In the present case, the conditions set out in point (a) are also not applicable. d and e art. 6 sec. 1 GDPR, because this processing was not necessary to protect the vital interests of the data subject or another natural person, or to perform a task carried out in the public interest or in the exercise of official authority vested in the controller. The processing of the complainant's personal data by the School could not take place also on the basis of the premise specified in art. 6 sec. 1 lit. f GDPR, because the administrator has not demonstrated a legal interest that would justify the processing of data in the indicated manner. Thus, it should be concluded that the disclosure of the complainant's personal data by hanging the letter of [...] May 2018 on the blackboard in the teachers' room took place without any legal basis and exposed the access to the complainant's personal data by unauthorized persons.

Administrative proceedings conducted by the President of the Personal Data Protection Office serve to control the compliance of data processing with the provisions on the protection of personal data and is aimed at issuing an administrative decision. Decisions of the President of the Personal Data Protection Office serve to restore lawfulness pursuant to Art. 58 sec. 2 lit. b GDPR, inter alia, by issuing a reminder to the controller or processor in the event of a breach of the provisions of this Regulation by a processing operation. The school disclosed the personal data of the complainant in the field of name, surname and address of residence, in breach of the provisions on the protection of personal data, however, the above-mentioned

processing is currently not continuing. In connection with the above, the President of the Personal Data Protection Office, exercising his powers specified in Art. 58 sec. 2 lit. b of the GDPR, applied an admonition to the School.

Bearing in mind the above, the President of the Personal Data Protection Office resolved as in the operative part of this decision.

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) and in connection with joke. 13 § 2, art. 53 § 1 and article. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2017, item 1369, as amended), the party has the right to lodge a complaint against this decision with the Provincial Administrative Court in Warsaw, in within 30 days from the date of delivery of this decision, via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). 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.

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