

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 10

September

2021

## DECISION

DKE.523.22.2021

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended), Art. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with art. 12 points 1-2 and article. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and with Art. 57 sec. 1 lit. a) and lit. f) 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 (Journal UE L 119 of 04/05/2016, p. 1, with amendments announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2, and in the Official Journal of the European Union L 74 of 04/03/2021, p. 35 ), after conducting the administrative procedure regarding the complaint of Mr. E. P. about irregularities in the processing of his personal data by T. S.A., consisting in the processing of personal data of the above-mentioned with regard to the data on the copy of the ID card without legal basis, the President of the Office for Personal Data Protection discontinues the proceedings.

### Justification

The President of the Personal Data Protection Office (formerly: the Inspector General for Personal Data Protection) received a complaint from Mr. E. P., hereinafter referred to as the "Complainant", about irregularities in the processing of his personal data by T. S.A., hereinafter referred to as the "Society", consisting in the processing of the Complainant's personal data in the scope of data contained in the copy of the ID card without a legal basis. The complainant argued that the Company, in connection with the complainant's application number [...] for the conclusion of an insurance contract relating to the vehicle [...] with the registration number [...], obtained a scan of his ID card. Moreover, the photocopy of the applicant's ID card was also made in connection with the communication of the applicant's communication damage on [...] August 2016. In connection with

the presented situation, the applicant requested an examination of the legality of the processing by the Society of the applicant's personal data contained in the copy of his ID card.

In the course of the explanatory proceedings conducted in this case, the President of the Personal Data Protection Office established the following factual circumstances relevant to the resolution of the case:

On [...] July 2016, the Complainant concluded with the Insurance Company an insurance contract for a motor vehicle of the brand [...] with registration number [...], pursuant to which the Insurance Company was obliged to pay the Complainant compensation in the event of a motor vehicle loss occurring on his vehicle. The conclusion of the contract was mediated by an insurance agent - P. Spółka z o.o. (hereinafter referred to as "P. Sp. z o.o."), the official car dealer [...]. The activities related to the conclusion of the contract were performed on behalf of the insurance agent by Mr. A. W. scanned the following documents: the application for the conclusion of the insurance contract, the vehicle registration certificate, the vehicle purchase invoice and the customer's statement on the insurance history to date.

The Complainant's personal data in the scope of: name and surname, PESEL number, date of birth, sex, address, telephone number, application number and data concerning the subject of the policy were obtained by the Company in order to conclude and implement the insurance contract. Thus, the legal basis for obtaining the complainant's personal data by the Society was Art. 23 sec. 1 point 3 of the Act of August 29, 1997 on the protection of personal data.

On [...] August 2016 the Complainant reported to the Insurance Company the motor damage to his vehicle. The notification was made at the Authorized Service Center (ASO) - headquarters of P. Sp. z o.o. Due to the fact that the Complainant applied for the payment of the amount of compensation directly to the website's account, its employee was obliged to confirm the Complainant's identity on the basis of the presented identity card. For this purpose, the service employee took pictures of the documents presented by the Complainant, including the ID card, thus recording all personal data contained therein. The documentation provided to the Insurance Company was attached to the claim file containing information collected in order to determine the liability of the insurance company and the amount of compensation due to the Complainant.

In written explanations of [...] April 2021, submitted as part of these proceedings, the Society informed that the liquidation proceedings concerning the above-mentioned motor damage was completed with the issuance of an insurance decision of [...] November 2016. A copy of the Complainant's ID card has been permanently removed from the claim file, therefore the Insurance Company does not process copies of the personal data contained therein.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o. 2018 ", ie on 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 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, as amended), in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended), hereinafter referred to as "k.p.a.". All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1–3) of the Act on Personal Data Protection, 2018).

Pursuant to Art. 57 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 (general regulation on the protection of personal data) (Journal of Laws UE L 119 of 04/05/2016, p. 1, with amendments announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2, and 04.03.2021, p. 35), hereinafter referred to as "Regulation 2016/679", without prejudice to other tasks specified under this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (letter a) and considers complaints by the data subject or authorized by him - in accordance with art. 80 with Regulation 2016/679 - the entity, organization or association, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and results of these proceedings within a reasonable time (point f).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the facts existing at the time of issuing this decision. As the doctrine points out, "the 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 realizes the goal of administrative proceedings, which is the implementation of the binding 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). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 stated that: "when examining (...) the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed on the date of issuing the decision on the matter and whether it is done in a lawful manner" .

Referring the above to the facts established in the case, it should be stated that in the course of the investigation, the President of the Personal Data Protection Office established that currently the complainant's personal data contained in the copy of the ID card are not processed by the Society. The photocopy of the applicant's ID card made in connection with the liquidation proceedings was permanently removed from the documentation held by the Society. The removal took place in the course of these administrative proceedings, therefore the proceedings became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Civil Procedure

Pursuant to the above-mentioned provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, in whole or in part, respectively. The wording of the above-mentioned provision leaves no doubt that in the event that the proceedings are deemed groundless, the authority conducting the proceedings will obligatorily discontinue them. At the same time, the literature on the subject indicates that the redundant nature of the administrative procedure referred to in Art. 105 § 1 of the Code of Civil Procedure means that there is no element of a material legal relationship, and therefore a decision to settle the matter cannot be issued by deciding on its substance. The prerequisite for discontinuation of the proceedings may exist even before the proceedings are instituted, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before an administrative authority (B. Adamiak, J. Borkowski, Code of Administrative Procedure Comment ", 14th Edition, C.H. Beck Publishing House, Warsaw 2016, p. 491). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case no. act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

In the present case, this element of the substantive law relationship, which ceased to exist during the proceedings, is the

processing by the controller of the complainant's personal data (to the extent - limited by the content of the complaint and the demands made therein - of the data contained in the photocopy of his ID card). The statement of the existence of this fact would only allow to decide on its legality (the existence of a legal basis for processing) and compliance with the provisions on the protection of personal data (including the lawfulness of processing the data questioned by the Complainant).

The determination by the public administration body of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and further conduct of the proceedings in such a case would be defective, significantly affecting the outcome of the case.

Incidentally, it should be mentioned that on the basis of the evidence gathered in the case, it was impossible to confirm the validity of the allegations made by the Complainant that the Company processed his personal data in connection with obtaining a scan of the Complainant's ID card in the course of activities aimed at concluding the insurance contract on [...] July 2016. While the fact that such a scan was prepared by an employee of P. Sp. z o.o., acting on behalf of the insurance agent, this circumstance was not confirmed by the Society, whose collection does not contain the questioned scan of the Complainant's ID card. The written explanations of the Insurance Company from [...] December 2019 show that in order to draw up the insurance contract, the entity intermediating in its conclusion undoubtedly scanned the following documents (then forwarded to the Insurance Company): application for the conclusion of an insurance contract, vehicle registration certificate, purchase invoice the vehicle and the customer's statement on the insurance history to date. On the day of submitting the said explanations, the Society did not have a scan of the Complainant's ID card, which justifies the claim that the document had never been handed over to the Society, or had been permanently removed from the administrator's collection before the commencement of these proceedings. For the above reasons, the data protection authority found the allegation raised by the Complainant to be unfounded.

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 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.

2021-11-02