THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

ZKE.440.86.2019

Based on Article. 104 § 1 and art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) in connection with joke. 18, art. 23 sec. 2 and 31 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and art. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended) and art. 6 sec. 1 lit. c, art. 57 sec. 1 lit. f) and art. 28 and 29 of the Regulation of the European Parliament and of the EU Council 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 (General Data Protection Regulation personal data) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. PP, regarding the processing of his personal data by PSA, the President of the Personal Data Protection Office:

refuses to accept the request regarding data processing by P. S.A.,

discontinues the proceedings regarding data processing by I. Sp. z o.o.

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) on [...] October 2017 received a complaint from Mr. P. P., hereinafter referred to as the Complainant, about the processing of his personal data by P. S.A. THERE ARE." In the content of the above-mentioned of the complaint The complainant indicated that the insurer of the perpetrator of the accident, i.e. P. S.A., provided I. Sp. z o.o. his personal data (including sensitive data), without his consent, i.e. in violation of the provisions referred to in the Act of August 29, 1997 on the protection of personal data (Journal of Laws of 2016, item 922, as amended) .), therefore he demanded that the deficiencies in the processing of personal data be remedied by:

"1) fulfilling the obligation towards me and obtaining consent resulting from the content of art. 23 sec. 1 point 1 of the Act;

2) deletion of my personal data (including sensitive data) made available to I. Sp. z o.o. Without my permission;".

In a letter of [...] December 2017, the Complainant extended his complaint to I. Sp. z o.o. "Regarding the content of the letter of [...] September 2017 addressed to the medical partner I. Sp. z o.o., where company I. ordered not to submit the test results to Mr. P. P. "

On the basis of the evidence collected in the case, the President of the Office for Personal Data Protection established the following facts:

The applicant was injured in a traffic accident. He approached P. S.A. for carrying out the claim adjustment process.

In the explanations of [...] September 2017 (ref. No .: [...]), P. S.A. indicated that the Complainant filed a motor damage [...] September 2017, and [...] September 2017 a claim for a personal injury compensation claim during the accident. Both claims were the result of an accident, the perpetrator of which by P. S.A. was covered by insurance in connection with the concluded contract of compulsory third-party liability insurance of motor vehicle owners. P. S.A. stated that he was the administrator of the Complainant's personal data and that the Complainant himself was the source of obtaining his personal data (including sensitive data). The complainant's personal data are currently processed for the purposes of liquidation related to the reported claims, and after their completion - for archival purposes and in their scope, they include: name and surname, address, telephone number, e-mail address, numbers reported by the complainant, data of the damaged vehicle, data from the medical records provided by the Complainant, data on the state of health that are in the opinion of the medical examiner prepared at the request of the PSA The legal basis authorizing P. S.A. to the processing of the complainant's personal data is art. 16 sec. 3 of the Act of May 22, 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Office of Motor Insurers (Journal of Laws of 2019, item 2214). In its explanations, P. S.A. also indicated that the Complainant's personal data had been entrusted for processing to company I. on the basis of the contract for entrusting the processing of personal data of [...] September 2016, constituting Annex No. [...] to contract No. [...] of [...] September 2016. on cooperation in issuing medical opinions and certificates in the field of NNW. The Complainant's personal data was entrusted for the purpose of performing the service related to the examination, issuing a medical certificate, medical opinion or a default opinion necessary in the claim settlement process (§ [...] of the data processing agreement). According to P. S.A. The Complainant's allegation that the provisions on the protection of personal data were infringed as a result of entrusting the processing of his data to company I. is unfounded, because P. S.A. has not lost control of these data and is still their administrator. In addition, the certifying doctors

issuing opinions under the above-mentioned an agreement concluded between P. S.A. and I. Sp. z o.o. cannot provide clients with information due to the fact that it is P. S.A. who decides on the purposes and means of processing their data.

The content of the agreement No. [...] of [...] September 2016 on cooperation in issuing medical opinions and certificates in the field of NNW shows that I. Sp. z o.o. undertook to provide services by doctors and psychologists from the network of partner facilities with whom it has concluded relevant agreements (§ [...]), while the tests are carried out in the Contractor's doctor's offices or doctors from the network of partner facilities that meet the current applicable requirements of the Sanepid (§ [...] ). Issue by I. Sp. z o.o. a medical decision or opinion with examination of the injured person may take place after: 1) checking the identity of the injured person, 2) thorough direct examination of the injured person, 3) analyzing the documentation received from P. S.A. and provided by the injured person for a medical examination and a detailed description of this documentation in the decision or opinion form. Description or sending of additional documentation provided by the aggrieved party together with the results of the order, provided that it is other documentation than that sent by P. S.A. (§ [...]). Company I. under the contract is obliged to immediately submit to P. S.A. any documents confirming the performance of the service (§ [...]). In addition, in accordance with the "Principles [...]", constituting Appendix No. [...] to the above-mentioned of the contract, I. may summon persons who have claimed health impairment for medical examinations, but the certifying physician may not inform the aggrieved party, inter alia, on the amount of the percentage of permanent health impairment, the amount of the benefit, which can be determined based on the percentage of the damage or other arrangements that constitute the premises for determining the liability of P. S.A. This information may be provided to the injured person only by the competent unit P. S.A. ([…] Principles […]).

In explanations of [...] February 2018, I. Sp. z o.o. confirmed that she processes the personal data entrusted to her by P. S.A. on the basis of the data processing agreement attached to the agreement of [...] September 2016 on cooperation in issuing medical opinions and decisions in the field of NNW. And SP. z o.o. stated that on the basis of the above-mentioned entrustment agreement processes personal data only for the purpose of performing medical examinations and medical opinions and forwarding their results to P. S.A., and after the above-mentioned purpose of processing has been exhausted, the data is permanently deleted. Moreover, the letter indicated in this point shows that I. Sp. z o.o. does not process the complainant's personal data - company I. explained: “(...) we did not find in our files any information on the processing of the complainant's personal data. However, this does not mean that the Complainant's data have never been processed by us (...).

(...) it is probable that the Complainant's data was entrusted to us by P. S.A. in order to issue a medical opinion, but at the time of the execution of the order and transfer of the results to P., these data were permanently deleted by us. "

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), i.e. 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), hereinafter referred to as the "Act of 1997", in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended ), hereinafter referred to as Kpa. All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1) - 3 of the Act of May 10, 2018 on the protection of personal data).

Pursuant to Art. 57 sec. 1 letter f) of the Regulation of the European Parliament and the EU Council 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 (general regulation on the protection of personal data) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), hereinafter referred to as "GDPR", without prejudice to other tasks defined pursuant of this Regulation, each supervisory authority on its territory shall deal with complaints lodged by a data subject or by a body, organization or body in accordance with Art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to pursue further proceedings or coordinate actions with another supervisory authority.

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 a 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 time when the complaint was received by the Inspector General for Personal Data Protection, the Act of 1997 was in force, therefore, the President of the Office, on the basis of the collected evidence, assessed the controller's behavior in the context of the above Act.

The legal basis authorizing P. S.A. for the processing of the complainant's personal data was the premise specified in Art. 23 sec. 2 of the 1997 Act, i.e. Art. 16 sec. 3 of the Act of May 22, 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Office of Motor Insurers (Journal of Laws of 2003, No. 124, item 1152, as amended), according to which the person whose liability is covered by insurance obligatory, as well as the person submitting the claim, should provide the insurance company, the Insurance Guarantee Fund or the Polish Bureau of Motor Insurers with the evidence they have regarding the event and the loss, and make it easier for them to determine the circumstances of the event and the extent of the loss, as well as provide assistance in the investigation by the insurance company, the Insurance Fund Warranty or the Polish Motor Insurers Bureau for claims against the perpetrator of the damage. Currently, the equivalent of the above-mentioned the legal basis is Art. 6 sec. 1 letter c) of the GDPR.

Having regard to the complainant's allegation of a breach by P. S.A. provisions on the protection of personal data, it should be stated that it was not confirmed in the evidence of the case. The legal basis for the transfer of the Complainant's personal data by P. S.A. company I. was Art. 31 of the Act of 1997, which provides that the administrator may entrust another entity, by way of a written contract, with the processing of data (paragraph 1), while the entity referred to in paragraph 1, may process data only to the extent and for the purpose provided for in the contract (section 2). A characteristic feature of the entrustment agreement is that the data controller does not have to personally perform activities related to the processing of personal data. For this purpose, it may use the services of specialized external entities, commissioning them to perform the entire process of personal data processing, or only certain activities, e.g. collection or storage. The basis for such action is Art. 31 of the Act of 1997. In the case of personal data transfer, we deal with the processing of data on behalf of the administrator, within the limits specified in the data processing agreement and not for the processor's own purposes, but for the purposes of the data

administrator's purposes. Importantly, when entrusting the processing of personal data, their administrator does not change. The transfer of the Complainant's personal data took place on the basis of an agreement concluded between P. S.A. and I. Sp. z o.o. contracts for entrusting the processing of personal data. P. S.A. remained the administrator of the complainant's personal data, and I. Sp. z o.o. performed for and on behalf of P. S.A. activities commissioned under the concluded contract. It should be noted that the transfer of the Complainant's personal data to company I. did not require the Complainant's consent for its legality, therefore, in the opinion of the President of the Personal Data Protection Office, there are no grounds to conclude that the Complainant's personal data are processed in a manner inconsistent with the provisions on data protection. The assessment carried out by the President of the Personal Data Protection Office serves to examine the legitimacy of sending a warrant to a specific subject, corresponding to the disposition of art. 18 sec. 1 of the Act of 1997, aimed at restoring the lawful state in the process of data processing - so it is justified and necessary only insofar as there are irregularities in the processing of personal data. In a situation where no irregularities were found in the data processing by P. S.A., it was necessary to adjudicate as in point 1 of the ruling.

Referring to the complaint about irregularities in the processing of the complainant's personal data by I. Sp. z o.o., it should be indicated, as already mentioned above, that the President of the Office, when issuing an administrative decision, is obliged to adjudicate on the basis of the actual state of affairs at the time of issuing this decision. Moreover, the judgment of May 7, 2008 in the case with reference number act I OSK 761/07, in which the Supreme Administrative Court stated that "when examining [because] 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 and whether it is done in a consistent manner with the law ".

As is clear from the findings of the facts, company I. is not currently processing the complainant's personal data. According to the content of Art. 105 paragraph. 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as the Code of Administrative Procedure, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision on discontinuation of the proceedings, respectively, in whole or in part. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed groundless, the body conducting the procedure will obligatorily discontinue it. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative Proceedings means that there is no element of the material legal relationship, and therefore it

is not possible to issue a decision settling the matter by deciding on its substance (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Comment" 7th edition Wydawnictwo CH Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 (III SA / Kr 762/2007): "The procedure becomes redundant when one of the elements of the substantive legal relationship is missing, which means that the case cannot be settled by deciding on the substance ". 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 of substance, and continuing the proceedings in such a case would be defective, significantly affecting the result of the case.

In the present case, it should be stated that the proceedings regarding the complaint of Mr. P. P. about irregularities in the processing of his personal data by I. Sp. z o.o., has become redundant, therefore the President of the Office for Personal Data Protection ruled as in point 2 of the decision conclusion.

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 (address: ul. Stawki 2, 00-193 Warsaw). The entry fee for the complaint is PLN 200.00. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-03-08