

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 22

November

2018

DECISION

ZSOŚS.440.53.2018

Based on Article. 104 § 1 of the Act and on June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096), art. 12 point 2, art. 18, art. 22 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 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 a complaint from Mr. M. in the town of I., the County Police Commander in S., in connection with providing unauthorized persons with the report on explanatory activities carried out in connection with disciplinary proceedings, containing the complainant's personal data, I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. M. N. in the town of I., hereinafter referred to as the "Complainant", the County Police Commander in S., hereinafter referred to as the "Commander", in connection with providing unauthorized persons with the report on explanatory activities carried out in connection with the disciplinary proceedings, containing the complainant's personal data.

It should be noted here that on May 25, 2018, in place of the current Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), the Act of of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), in accordance with art. 166 paragraph. 1 of this act, as of the date of its entry into force, the Inspector General for Personal Data Protection became the President of the Office. Pursuant to Art. 167 paragraph. 1 of the current law on the protection of personal data, the Office of the Inspector General for Personal Data Protection becomes the Office upon its entry into force.

In the content of his complaint, the Complainant indicated that the report on investigations conducted in connection with the disciplinary proceedings contained a number of information concerning his personal data, i.e. data concerning his health,

alleged addictions or sexual preferences. The complainant further explained that, on the order of the County Police Commander in S., who was conducting the disciplinary proceedings, in November 2016 made the full content of the above-mentioned document available to the officers of the County Police Headquarters in S. in order to get acquainted with its content. Considering the above, in the content of the complaint, the Complainant demanded that the President of the Office take measures to protect his personal data by removing deficiencies and take additional measures, if any, to protect his personal data against further disclosure to unauthorized persons.

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.

By letters of [...] September 2018, the President of the Personal Data Protection Office informed the Complainant and the Commander of the initiation of proceedings in the case and asked the Commander to comment on the content of the complaint and submit written explanations. On [...] October 2018, the Office for Personal Data Protection received a letter from the Commander ([...]), in which he explained that the personal data of the Complainant, who was a police officer of the Poviát Police Headquarters in S., were processed by the Poviát Commander in S., incl. in the proceedings marked with the reference number [...], due to the fact that in 2016 the Commandant was the complainant's superior competent for personal matters. As the basis for the processing of personal data, the Commandant indicated Chapter 10 of the Act of April 6, 1990 on the Police (Journal of Laws of 2017, item 2067, as amended) and the Regulation of the Minister of the Interior of February 13, 2014 on detailed the mode of performing activities related to disciplinary proceedings against police officers (Journal of Laws of 2014, item 306). The Commandant also explained that the Complainant's personal data had been processed in order to ensure the proper course of investigations and disciplinary proceedings to the extent necessary to achieve the objectives of these proceedings. At the same time, the Commandant denied that there was a situation in which the complainant's personal data would have been made available by him to unauthorized persons. He also did not give orders that the above-mentioned the data was shared by other people. Referring to the situation described in the complaint, the Commander explained that investigations were carried out at the Poviát Police Headquarters in S. which concerned a number of inappropriate behavior of policemen, including the complainant. One of the commands of the Poviát Police Commander in S., included in the report, constituting an attachment to the complaint, and addressed to the head of the Prevention Department of the Poviát Police Headquarters in S. - sub-inspector A. H., was the use of the above-mentioned the report and circumstances described therein

for training purposes. As explained by the Commander, subinsp. A. H. misinterpreted this order and acquainted the policemen from the Duty Team with the staff reserve and officials (managers) with the content of the report. The commandant also explained that the persons to whom the above-mentioned the report is perfectly aware of the complainant's problems. The Commandant also pointed out that the situation described above was the subject of separate proceedings, which showed that Podinsp. H. improperly carried out the order and consequently the professional consequences were imposed against him. In these facts, the President of the Personal Data Protection Office considered the following.

In the present case, the complainant alleged that unauthorized persons had accessed the report on explanatory activities containing his personal data in the disciplinary proceedings conducted against him.

The Act on the Protection of Personal Data of August 29, 1997 provides the legal basis for the application of state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, when assessing the status of the case and subsuming, will determine whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in art. 23 sec. 1 above of the Act on the Protection of Personal Data and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuing of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing. Pursuant to Art. 1 of the aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, in the sense referred to in Art. 7 point 2 of this Act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time. Personal data is any information relating to an identified or identifiable natural person (Article 6 (1) of the Act). Pursuant to Art. 3 sec. 1 above of the act, it is applied, inter alia, to to state authorities. For this reason, common courts, prosecutor's offices and police stations are also obliged to comply with its provisions. At this point, the principle of legality should be indicated (Article 26 (1) (1) of the Act), according to which the data controller processing the data should exercise special care to protect the interests of data subjects, and in particular is obliged to ensure that such data were processed in

accordance with the law. In addition, the administrator of personal data should process them for specified lawful purposes and not subject them to further processing inconsistent with these purposes (Article 26 (1) (2) of the Act). In order to provide personal data, which is one of the legal forms of personal data processing within the meaning of the Act, one of the conditions listed in art. 23 of the Act. In the opinion of the President of the Office in the discussed case, this condition was not met.

At this point, it should be emphasized that the responsibility of the controller of personal data for improper processing of personal data extends not only to his personal behavior towards this information, but also to the behavior of his employees.

The Supreme Administrative Court in its judgment of April 4, 2003 (file number II SA 2935/02) stated that "the controller is responsible (...) for the actions of its employees in breach of the Act on the Protection of Personal Data. At the same time, he cannot exculpate himself, pursuant to Art. 26, that he exercised special care to protect these data".

In turn, according to art. 36 of the Act, the Commandant, as the data controller, is obliged to apply technical and organizational measures ensuring the protection of personal data being processed, appropriate to the threats and categories of data protected, and in particular, should protect the data against unauthorized disclosure, removal by an unauthorized person, processing in violation of the Act and alteration, loss, damage or destruction. The legislator does not specify what specific measures are to be applied by the data controller. The administrator's obligations arise from the tasks assigned to him. These tasks are defined very broadly and generally: the administrator has - as indicated in art. 36 - ensure protection of processed personal data.

The evidence gathered in the case shows that the report on the investigation into the circumstances of the Complainant's non-compliance with the rules of professional ethics, or more precisely - the circumstances described therein, were to be used for training purposes. As explained by the Commander, subinsp. A. H. misinterpreted this order and acquainted the police officers from the Duty Team with the staff reserve and functionaries (managers) with the content of the report, therefore the complainant's personal data was disclosed to unauthorized persons. It is irrelevant that the persons to whom the above-mentioned the report was perfectly aware of the complainant's problems.

Regardless of the above, it should be noted that the proceedings conducted by the President of the Office are 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.

Pursuant to Art. 18 of the Act, the President of the Office, ex officio or at the request of the person concerned, orders, by way of an administrative decision, the restoration of the legal status, only if he finds that there has been a breach of its provisions. It follows from the above that the authority may order the removal of deficiencies by ordering the disclosure of the requested data only after prior assessment of the behavior of the data controller who previously unjustly refused to update them, or remained inactive despite requests addressed to him.

It should be clarified that in the circumstances of the case under consideration there are no grounds for formulating any order to the Commander. Firstly, the President of the Office does not have any legal instruments that would make it possible to offset the effects of the unauthorized disclosure of the Complainant's personal data. This disclosure is an irreversible fact in the sense that it is not possible to lead to the situation which would have occurred had the infringement not taken place. Moreover, the condition for issuing by the authority the decision referred to in Art. 18 of the Act, there is a breach of the right to personal data protection at the time of issuing the administrative decision. Meanwhile, in the case at hand, the disclosure of data was incidental, therefore there are no grounds to assume that the actions questioned by the Complainant would be repeated in the past. The President of the Office is not authorized to issue an order in this case regarding possible unauthorized processing of the Complainant's personal data in the future. It should be emphasized that an administrative decision is a specific and individual act and always concerns a strictly defined, established and current state of affairs at the time of the ruling. The President of the Office is not authorized to issue a decision with regard to future and often hypothetical situations.

Notwithstanding the foregoing, I would like to inform you that if, in the Complainant's opinion, his personal rights were infringed, which pursuant to Art. 23 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 1025) are in particular health, freedom, honor, freedom of conscience, name or nickname, image, correspondence secret, inviolability of the apartment, creativity scientific, artistic, inventive and rationalizing, he may pursue his claims in this respect by means of a civil action brought before the locally competent common court. According to the content of Art. 24 § 1 and 2 above of the act, the person whose personal interest is threatened by someone else's action, may demand that such action be discontinued, unless it is not unlawful. In the event of an infringement, he may also require the person who committed the infringement to perform the

actions necessary to remove its effects, in particular, to submit a declaration of appropriate content and in an appropriate form.

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 Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096), from this decision, the party has the right to submit an application for reconsideration 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.

2019-04-03