

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 24

September

2018

DECISION

ZSOŚS.440.80.2018

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) and Art. 12 point 2, 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 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000), after administrative proceedings regarding the complaint of Mr. C. S., residing in in W., for failure to provide personal data by the District Police Commander [...], the President of the Personal Data Protection Office

discontinues the proceedings

Justification

On [...] January 2017, the complaint of Mr. in W. for the failure by the District Commander of the Police [...] (hereinafter referred to as the Commander) to provide the personal data of the owner of the "aggressive dog" to the Complainant.

In the content of the complaint, the Complainant argued that the Commandant had refused to accept his request for disclosure of the personal data of the owner of the dog, which on [...] November 2016 had bitten the dog belonging to the Complainant.

The scope of the requested data included the indication of the first name, surname and address of residence or residence of the above-mentioned the owner of the dog. In the Complainant's opinion, the Commandant's unjustified refusal to provide the above-mentioned personal data constitutes a violation of Art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the Protection of Personal Data, and also makes it impossible to pursue a claim for damages, as one of the obligatory elements of the pleading initiating the proceedings is the identification of the perpetrator of the damage. Therefore, as indicated by the Complainant, such a situation may lead to the perpetrator avoiding liability for the damage caused.

Considering the above, the complainant requested that the personal data of the owner of the "aggressive dog" be made available in order to be able to exercise the right guaranteeing the injured party compensation for the damage suffered in the

form of reimbursement of the costs of veterinary treatment of the bitten dog.

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. The applicant, by letter of [...] November 2016, asked the District Police Headquarters [...] to disclose the data of the owner of the "aggressive dog" in connection with the incident of biting the applicant's dog on [...] November 2016 . By letter of [...] January 2017 (reference number [...]), the District Police Commander [...] refused to provide the data, citing the lack of authorization to disclose such data without the consent of the data subject. As a result, the Complainant asked the Inspector General for Personal Data in a letter of [...] January 2017 to order the Commander to disclose the data of the dog owner to the Commander in order to enable him to claim damages, citing as the basis of his request Art. 18 sec. 1 point 2 of the Act of August 29, 1997 on the protection of personal data. Subsequently, to the letter of [...] February 2017, the complainant attached the documentation of the veterinary treatment in order to demonstrate the costs of treatment and thus to demonstrate the harm suffered. Due to the need to clarify the application, the Inspector General for Personal Data Protection, in a letter of [...] February 2017, asked the Complainant to clarify the scope of the data which he is requesting. In reply, the Complainant indicated that he was asking for an order to disclose the data concerning the first name, surname, address and PESEL number of the dog owner (letter of [...] February 2017 in the case file). Then, by letters of [...] March 2017, the Inspector General for Personal Data Protection informed the Complainant and the Commander of the initiation of explanatory proceedings in the case and asked the Commander to comment on the content of the complaint and submit written explanations, attaching copies of the complaint. On [...] March 2017, the Office of the Inspector General for Personal Data Protection received a written reply from the Commander, in which he explained that on [...] November 2016, the press officer of the District Police Headquarters [...] received a letter by e-mail The complainant, in which he asked for confirmation of the data of the officers conducting official activities on [...] November 2016 and for the personal data of the dog owner. As the justification of his request, he indicated that the data is necessary for him to file a motion to the court for punishment for an offense against the case of an act penalized in Art. 77 of the Act of May 20, 1971 - the Code of Petty Offenses (Journal of Laws of 2018, item 618, as amended), hereinafter referred to as "Whoever fails to observe the usual or prescribed precautions when keeping an animal, is subject to a fine of up to PLN 250 or punishes rebukes. " The Commandant explained that after carrying out the activities it was found that the Complainant, pursuant to the provisions of the Act of August 24, 2001 - the Code of Conduct in Petty Offenses

(Journal of Laws 2018, item 475, as amended), hereinafter referred to as the Code of art. 17 § 1 The public prosecutor in all cases of misdemeanors is the Police, unless the law provides otherwise. Therefore, the Complainant is not entitled to submit an individual motion for punishment to the court, with the exception of cases of misdemeanors prosecuted at the request of the aggrieved party (Article 27 § 1 of the CC). Such a right may be exercised in the case of offenses penalized in art. 119, 123, 124, 126, 127, 150, 151, 157, Moreover, pursuant to Art. 27 § 2 of the same act, which states that in cases of offenses other than those specified in § 1, the aggrieved party may independently file a motion for punishment as an auxiliary prosecutor, if, within one month from the notification of the misdemeanor, the authority authorized to act as the prosecutor in these cases the public will not be notified of a request for punishment submitted by this authority or will receive the notification referred to in Art. 54 § 2. In connection with the above, in the opinion of the Commandant, on the basis of the above-mentioned provisions, the request for disclosure of the personal data of the dog owner has become redundant. In the letter, the Commander also pointed out that the Police, due to the tasks performed, are obliged in particular to exercise due diligence related to the processing of personal data in order to protect the interests of the data subjects, and in particular to ensure that the data are processed in accordance with the law. factually correct and adequate for the purposes for which they are processed. After analyzing the facts of the case, the personal data administrator concluded that there were no premises resulting from the content of Art. 23 sec. 1 of the Act on the Protection of Personal Data, providing the basis for the disclosure of data. At the same time, in the same letter, the Commandant indicated that the complainant had exercised his right in the course of further actions and that, as an aggrieved party, he had filed a notification of the misdemeanor. In the course of the proceedings for the misdemeanor, the complainant, acting pursuant to Art. 32 § 3 of the Code of Civil Procedure, Art. 38 § 1 of the Code of Civil Procedure in connection with Art. 156 § 5 of the Act of 6 June 1997 - Code of Criminal Procedure (Journal of Laws of 2017, item 1904, as amended), exercised the right to provide access to materials from explanatory activities, as a result of which he became acquainted with the data of the perpetrator of the offense , i.e. the owner of the dog.

It should be noted here that as of 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), i.e. 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 on the basis of 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 Code of Administrative Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In these facts, the President of the Personal Data Protection Office considered the following.

Referring to the complainant's request to order the District Commander of the Police to disclose [...] the personal data of the dog's owner in terms of his name, surname, address and PESEL number, it should be noted that as a result of the investigation, it was found that the abovementioned the data of the owner of the dog was made available to the complainant in the course of the proceedings in the petty offense case in which he acted as the aggrieved party, which results from the letter of [...] March 2017 attached to the files of the District Police Commander [...].

Thus, pursuant to the provisions of Art. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257, 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, a public administration body issues a decision to discontinue the proceedings, respectively, in whole or in part. The doctrine indicates that: "the redundant nature of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Civil Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance. The prerequisite for discontinuation of the proceedings may exist even before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the proceedings, i.e. in a case already pending before the administrative authority "(B. Adamiak, J. Borkowski," Kodeks administracyjny. Komentarz, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491).

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 as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the case. . The groundlessness of the proceedings may also result from a change in the facts of the case.

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 (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. The condition for issuing by the authority the decision referred to in the above-mentioned provision is the existence of a breach of the right to the protection of personal data at the time of issuing the administrative decision.

The Supreme Administrative Court in its judgment of November 19, 2001 (file reference number II SA 2702/00) stated: "(...) since in the course of the (...) administrative proceedings, the violation of the law that was to be related to decision, this proceeding has become pointless. In the light of the provision of Art. 18 sec. 1 of the Act, initiated by GIODO ex officio or at the request of the person concerned, the proceedings concerning the infringement of the provisions on the protection of personal data may only end with the issuance of an administrative decision ordering the data controller to restore the legal status, in particular: removal of deficiencies, supplementing, updating, rectifying, providing or not sharing personal data, applying additional security measures to the collected data, suspending the transfer of personal data to a third country, securing data or transferring it to other entities, deletion of personal data. In the facts of the case at hand, no such decision could have been issued, as the violation had previously been restored to the lawful state.

In a situation where the personal data of the dog owner requested by the Complainant were made available to him in the course of the proceedings for a petty offense, the legality examination, in the context of determining the possible existence of premises for the formulation of an order referred to in Art. 18 sec. 1 of the act would of course be redundant.

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 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), from this decision, 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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