

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 28

June

2019

DECISION

ZSOŚS.440.31.2019

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 5 sec. 1 point 6, art. 12 in connection with Art. 13 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125, hereinafter: the Act of December 14, 2018), following administrative proceedings on the complaint of Mr. MM, correspondence address: [...], on irregularities in the processing of his personal data by the Police Commander in Chief (Police Headquarters, 148/150 Puławska Street, 02-624 Warsaw) and the Poviats Police Commander in G . (County Police Headquarters, ul. [...]),

I refuse to accept the application

Justification

On [...] March 2019, the Personal Data Protection Office received a complaint from Mr. MM (hereinafter: "the Complainant") about irregularities in the processing of his personal data by the Poviats Police Commander G. (Poviats Police Headquarters, ul. ...).

In justifying his request, the complainant argued that in his opinion there were no grounds for which the Police authorities process his personal data in their files. Moreover, the applicant indicated that, without his consent, biological material in the form of fingerprints and a facial scan had been taken from him, and that this action had no legal basis. Considering the above, in the content of the complaint, the Complainant demanded that the President of the Office undertake actions aimed at protection of his personal data by deleting such personal data from police data files.

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 [...] March 2019, the President of the Personal Data Protection Office informed the Complainant and the Poviats Commander of the Police in G. (hereinafter referred to as: "Poviats Commander") about the initiation of explanatory proceedings

in the case and asked the Poviát Commander to respond to the content of the complaint and submission of written explanations. [...] on April 2019, the Office for Personal Data Protection received a letter from the County Commander (ref.: [...]), in which he explained that the Second Police Station in G. was conducting the case in which the applicant was a suspect, and the case was this ended with the referral by the District Prosecutor's Office in G. to the 7th Criminal Division of the District Court in Z. (file reference [...]) of an application pursuant to Art. 335 of the Code of Criminal Procedure, and then sentencing Mr. M. M. to imprisonment. The Poviát Commander also explained that the information, including the complainant's personal data, is processed in the National Police Information System (KSIP) and in dactyloscopic files, while in accordance with Art. 21 h and art. 21 nb of the Act of 6 April 1990 on the Police (Journal of Laws of 2019, item 161, as amended), the administrator of these data is the Police Commander in Chief.

Moreover, the Poviát Commander indicated that the complaint, for the purpose of further proceedings, was transferred to the Director of the Intelligence and Criminal Information Bureau of the Police Headquarters pursuant to § 73 sec. 5 and 6 of Decision No. [...] of the Police Commander in Chief of [...] April 2017 on the functioning of the National Police Information System (Journal of Laws of the Police Headquarters of [...] August 2017). In accordance with the above-mentioned regulations, responses to requests of persons regarding the fulfillment of information obligations or other obligations related to the processing of personal data in data files of the KSIP or responses to requests from persons, bodies, entities or other institutions regarding the processing of personal data in the KSIP Director of the Police Headquarters Office competent in criminal intelligence matters or managers of organizational units of this office on the basis of separate individual authorizations granted by the Police Commander in Chief. In addition, the heads of Police organizational units or cells to which the requests have been received, immediately forward these requests to the Office of the General Police Headquarters competent in criminal intelligence matters, and in the case of requests for the removal of personal data from the KSIP data files, additionally along with the position of the competent Police authority as to the legitimacy of deleting data from the KSIP and information on how to end the proceedings by the prosecutor's office or the court.

In a letter of [...] May 2019 (ref.: [...]) the Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the KGP (hereinafter referred to as: "the Chief"), acting under the authority of the Police Commander in Chief, explained that [...] May 2019 The complainant did not request the removal or disclosure of personal data. The head also indicated that the Police process personal data in accordance with art. 20 of the Act of April 6, 1990 on the Police (Journal of

Laws of 2019, item 161, as amended), hereinafter referred to as: "the Act on the Police". In the justification of the above-mentioned the position indicated the legal grounds for the processing of the complainant's personal data by the Police, in particular art. 20 paragraph 2a, section 2ac, paragraph. 2b, section 2c, sec. 17 of the Police Act, their scope and purpose of processing, paying attention to the particularity of these standards (*lex specialis*) in relation to general provisions, such as the provisions of the Act on the Protection of Personal Data and Art. 51 sec. 5 of the Constitution of the Republic of Poland, which refers to specific regulations in terms of the principles and procedure for collecting and disclosing information about a person. In addition, the letter in question indicates that the processing and exchange of information, including personal data, may concern personal data referred to in art. 14 sec. 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), i.e. sensitive data including personal data revealing racial, ethnic, political views, religious beliefs, beliefs, trade union membership and genetic data, biometric data to uniquely identify a natural person, health data, data on a natural person's sexuality and sexual orientation. The data on the results of deoxyribonucleic acid (DNA) analysis processed by the Police include information only about the non-coding part of DNA (Article 20 (1a) of the Police Act). At the same time, it was indicated that pursuant to Art. 21 h of paragraph 1. 1 of the Police Act, the Police Commander in Chief keeps the following dactyloscopic data files, of which he is the administrator within the meaning of the provisions on the protection of personal data: Central Dactyloscopic Registry, in which fingerprint and chejroscopic cards are collected containing fingerprints of persons; a set that automatically processes fingerprint data, in which information is processed, including personal data, on people's fingerprints, unidentified fingerprints from crime scenes and fingerprints that may come from missing persons.

In the above-mentioned In the letter, it was also noted that the Police process personal data only to the extent specified and in accordance with the provisions cited.

The President of the Personal Data Protection Office informed the Complainant, the Poviast Police Commander in G. and the Police Commander in Chief in letters of [...] as to the collected evidence and materials and the requests made in accordance with art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings. [...] June 2019, the Office for Personal Data Protection received a letter from the Police Commander in Chief (sign: [...]) informing that he would not exercise the right specified in Art. 10 § 1 of the Code of Civil Procedure In such a factual and legal state, the President of the Personal Data Protection Office considered the following.

The right to the protection of personal data, as one of the elements of the right to the protection of a person's privacy, has its source in the provisions of the Act of April 2, 1997, the Constitution of the Republic of Poland. According to the Basic Law, everyone has the right, inter alia, to for the legal protection of private and family life, honor and good name (Article 47 of the Constitution), no one may be obliged, other than under the Act, to disclose information about him (Article 51 (1) of the Constitution).

The Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime specifies, inter alia, rules and conditions for the protection of personal data processed by competent authorities for the purpose of identifying, preventing, detecting and combating prohibited acts, including threats to public safety and order, as well as the execution of pre-trial detention, penalties, order penalties and coercive measures resulting in deprivation of liberty (art. 1 item 1 point 1).

Pursuant to Art. 13 sec. 1 of the Act of December 14, 2018, the competent authorities process personal data only to the extent necessary to exercise the right or fulfill the obligation resulting from the law. The legal basis for the processing of personal data of persons against whom the proceedings were conducted by the Police authorities is art. 20 paragraph 1 of the Police Act, according to which the Police, subject to the limitations resulting from Art. 19, may obtain information, including covertly, collect, check and process it. The police may download, obtain, collect, process and use, in order to carry out statutory tasks, information, including personal data - about persons suspected of committing crimes prosecuted by public prosecution - also without their knowledge and consent (section 2a).

It should be emphasized that in the field of processing various types of information, including personal data, the function of the Police is special, as it collects information that is subject to a special regime and protection. This is reflected in Art. 20 paragraph 1 and sec. 2a of the Police Act, on the basis of which the Police, subject to the limitations resulting from art. 19, may obtain information, including classified information, collect, check and process it (section 1). The police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, also without their knowledge and consent: about persons suspected of committing crimes prosecuted by public prosecution, minors committing acts prohibited by the act as crimes prosecuted on public prosecution, on persons with undetermined identity or trying to conceal their identity, on persons posing a threat, referred to in the Act of 22 November 2013 on proceedings against persons with mental disorders posing a threat to the life, health or sexual freedom of other persons , on wanted persons, missing persons

and persons against whom protection and assistance measures have been applied, provided for in the Act of 28 November 2014 on the protection and assistance for the victim and witness (Journal of Laws of 2015, item 21) (Article 20 (2a) of the Police Act).

Detailed rules for the processing of personal data of persons mentioned in art. 20 paragraph 2a of the Police Act is specified in the regulation of the Minister of the Interior and Administration of August 24, 2018 on the processing of information by the Police (Journal of Laws of 2018, item 1636), hereinafter referred to as the "regulation".

Pursuant to § 10 of the regulation in question, the Police operates the National Police Information System (KSIP), which is a set of data sets in which information is collected, checked, processed and used, including personal data referred to in art. 20 paragraph 2a points 1-6, sec. 2ac and paragraph. 2b of the Police Act. The KSIP may also process information, including personal data, to which the Police is entitled to collect, obtain and process on the basis of separate acts, if this contributes to the coordination of information and more effective organization and implementation of the statutory tasks of the Police in the field of detecting and prosecuting perpetrators of crimes. and preventing and combating crime, as well as protecting human life and health (§ 10 (2) of the Regulation).

§ 4 specifies the procedure for collecting information, including personal data, as well as procedures ensuring the collection, collection, obtaining of information and organization of the files in a way that allows for the control of access to the files and supervision over the processing of information. At the same time, according to § 27 sec. 1 of the Regulation, access to the indicated data is strictly regulated, which means that it is limited to the authorized persons indicated in this provision.

Moreover, in accordance with para. 2 of this provision, information, including personal data, collected in data files is made available only to authorized persons, which at the same time proves, as mentioned above, the non-widespread nature of this collection, which is used to perform the statutory tasks of the Police. In addition, Chapter 5 of the Regulation indicates the criteria for verifying the storage of personal data in the system in terms of their further usefulness, which include, inter alia, the type and nature of the crime committed, the type and nature of the infringed good protected by law, the form of the perpetration, the form of the intention, the time that has elapsed since the data was entered into the filing system, the validity of the conditions of legality and the necessity of further data processing to perform statutory tasks, the occurrence of the circumstances specified in art. 20 paragraph 17b and 18 of the Police Act, and in the case of dactyloscopic data, the occurrence of the circumstances specified in art. 211 paragraph. 2 and art. 21m of this act.

It should be emphasized that the criterion of the necessity to process personal data in the KSIP must always be related to the statutory tasks of the Police, the implementation of which is to be achieved by the provisions of Art. 20 paragraph 1, sec. 2a and 2b in connection with Art. 20 paragraph 17 of the Police Act. Pursuant to Art. 16 of the Act of December 14, 2018, the administrator verifies personal data within the time limits specified by special provisions governing the activities of the competent authority, and if these provisions do not specify the deadline - at least every 10 years from the date of collecting, obtaining, downloading or updating the data. Moreover, in accordance with Art. 21e paragraph. 2 of the Police Act, information, including personal data, is removed from the DNA data set, if:

the proceedings were discontinued due to the fact that:

the act constituting the basis for entering personal data into the data set was not committed or there is no data sufficient to justify the suspicion of its commission,

the event or circumstance in relation to which the personal data was entered into the data set does not constitute a prohibited act;

data subject:

was acquitted by a final court judgment,

is 100 years old,

she died;

the identity of the human body was established;

they will lose their elimination usefulness, but not longer than after 5 years from the date of termination of the service relationship or employment.

In the course of the proceedings, the President of the Personal Data Protection Office established that the personal data indicated in the complaint by Mr. M. M. had been collected in connection with preparatory proceedings, in accordance with the provisions of law in force at that time, i.e. Art. 20 of the Act of April 6, 1990 on the Police (Journal of Laws of 2015, item 355, as amended), according to which the Police, subject to the limitations resulting from Art. 19, can obtain information, including covertly, collect, check and process it.

It should also be pointed out that the Police authorities properly verified the collected data of the Complainant in connection with his complaint to the President of the Personal Data Protection Office regarding the removal of his personal data from the

KSIP and dactyloscopic data files. According to Art. 16 of the Act on the protection of personal data processed in connection with the prevention and combating of crime, the administrator verifies personal data within the time limits specified by specific provisions governing the activities of the competent authority, and if these provisions do not specify the deadline - at least every 10 years from the date of collection, obtaining, downloading or updating data. The verification is carried out in order to determine whether there is any data, the further storage of which is unnecessary. Considering the above, the Commandant explained that the legally required verifications were carried out with regard to the circumstances of collecting DNA data from the Complainant and dactyloscopic data from the Complainant in terms of the prerequisites under Art. 51 sec. 4 of the Polish Constitution and Art. 16 of the Act on the protection of personal data processed in connection with the prevention and combating of crime. Due to the fact that the ten-year period of compulsory verification of the collected personal data has not expired yet, there are no statutory grounds for deleting the Complainant's personal data from the KSIP.

In the light of the above findings, one cannot agree with the complainant's allegations that the Commander-in-Chief breached the provisions of law in the present case and it should be stated that the above-mentioned the entity has a legal basis to refuse to delete the Complainant's personal data from the KSIP and dactyloscopic data files.

Considering the above, it should be stated that the complainant's personal data was obtained by the Police authorities in a legal manner and is also processed by them in the KSIP and in dactyloscopic data files. Police authorities assess the usefulness of the collected data, which implies that they will be kept in the KSIP and in the dactyloscopic data files. However, if the data about a person contained in the filing system becomes useless for preventive, evidence or detection purposes, the Police authority may decide to remove them as a result of the assessment referred to in § 29 of the Regulation of the Minister of Internal Affairs and Administration of 23 August 2018. on the processing of information by the Police. In view of the above, it should be stated that the manner of the Police's conduct in the discussed scope does not raise any doubts, and the complainant's complaint does not deserve to be taken into account.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

The decision is final. Based on Article. 9 sec. 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), in connection with art. 15 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court against this decision, within 30 days from the date of delivery

to her side. 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.

2019-07-01