

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 16

May

2019

## DECISION

ZSOŚS.440.72.2018

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) and art. 22 and art. 23 sec. 1 point 2 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 Art. 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, as amended) after administrative proceedings regarding the complaint of Mr. TS (ul. [...]) for the disclosure of his personal data by the District Court in O. with its seat at ul. [...] for an unauthorized person.

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. TS (ul. [...]) (hereinafter: the Complainant) about disclosure of his personal data by the District Court in O. (hereinafter: the District Court ) to an unauthorized person.

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 letter of [...] September 2017, the applicant complained that he was lodging a complaint against the Regional Court in connection with the disclosure of his personal data to an unauthorized person.

On [...] December 2018, the President of the District Court sent a letter stating that the applicant's personal data had been obtained from the parties to the proceedings in connection with the court cases with the applicant's participation before the District Court and the District Court in O. evidence was admitted from the opinions of the experts of the Family Diagnostic and Consultation Center and the Opinion Team of Judicial Specialists. The District Court processes the complainant's personal data for the purpose and to the extent necessary to prepare an opinion by the Opinion Team of Court Specialists in the District

Court, including the Customer Service Center operating in the District Court, to the extent necessary to provide information to the parties to the proceedings and authorized bodies in the course of the proceedings regarding. The disclosure of the complainant's personal data to Ms M. G. took place due to the fact that Ms M. G. was employed in the Opinion Team of Judicial Specialists at the Regional Court. Ms M. G. was employed on the basis of a civil law contract to perform the ordered activities resulting from the needs of the Opinion Team of Judicial Specialists in the District Court. The civil law contract contains a confidentiality clause regulating the obligation to keep confidential all information to which a person has access. If it is necessary to expand the Opinion Team of Judicial Specialists in the District Court, this is done on the basis of the decisions of the Meritian Courts issued in specific cases (also in the case of the Complainant).

In such a tactical and legal state, the President of the Personal Data Protection Office considered the following:

The Act of August 29, 1997 on the protection of personal data defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Act). Pursuant to the wording of art. 7 point 2 of the Act, data processing should be understood as any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Each of the ones indicated in Art. 7 point 2 of the Act, the forms of personal data processing should be based on one of the prerequisites for the legality of the processing of personal data, enumerated in Art. 23 sec. 1 of the Act on the Protection of Personal Data. Due to the wording of Art. 7 of the Constitution of the Republic of Poland of April 2, 1997, according to which organs of public authority operate on the basis and within the limits of the law, the content of Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, which states that the processing of data is permissible when it is necessary to exercise the right or fulfill the obligation resulting from the law. The legal basis for the processing of the Complainants' personal data by the District Court in court proceedings, i.e. their names, surnames, address, PESEL numbers is, inter alia, art. 187 § 1 of the Code of Civil Procedure, which states that the statement of claim should satisfy the conditions of a pleading. On the other hand, pursuant to Art. 126 of the Code of Civil Procedure each pleading should contain, inter alia, designation of the court to which it is addressed, name and surname or name of the parties, their statutory representatives and proxies. Moreover, pursuant to Art. 126 § 2 of the Code of Civil Procedure, when the pleading is the first letter in the case, it should contain, inter alia, designation of the subject of the dispute, place of residence or seat of the parties, their statutory representatives and proxies, PESEL number or NIP number.

It should be noted that the District Court processes the complainant's data in order to give the case the correct course of the proceedings, only to the extent covered by the evidence decision of the District Court in O. of [...] May 2016, file ref. file [...], in connection with the above, it should be noted that the processing of the complainant's personal data by the District Court is justified by the premises specified in Art. 23 sec. 1 point 2 and art. 27 sec. 2 point 5 of the Personal Data Protection Act. Pursuant to Art. 1 § 1 and art. 3 § 3 of the Act of August 5, 2015 on opinion-giving teams of forensic specialists (Journal of Laws of 2018, item 708, as amended), regional courts have opinion-making teams of court specialists whose task is to prepare, at the request of the court, or the prosecutor, opinions on family and guardianship matters and in juvenile cases, based on the conducted psychological, pedagogical or medical examinations, the team prepares opinions for courts and prosecutors in the area of jurisdiction of the district court in which it operates, and in particularly justified cases it may prepare an opinion for courts and prosecutors outside his area of jurisdiction. Additionally, art. 2 above of the Act stipulates that the team includes specialists in psychology, pedagogy, pediatrics, family medicine, internal medicine, psychiatry and psychiatry of children and adolescents. Ms M. G. was employed in the Opinion Team of Judicial Specialists on a quarter time basis. In connection with the above, it cannot be said that the Complainant's personal data was disclosed to an unauthorized person. Ms M. G. obtained access to the Complainant's personal data in connection with the performance of official duties for the purpose of issuing an opinion by the Opinion Team of Judicial Specialists. It should be emphasized that in § 7 of the commissioning contract concluded with Ms M. G., there was a confidentiality clause regulating the obligation to keep confidential all information to which the expert has access.

Regarding the complainant's allegations regarding the grounds for employment of Ms MG in the Opinion Team of Judicial Specialists, the lack of consent of the President of the Court for additional employment and the unlawfulness of allowing Ms MG to express its opinion, it should be noted that the authority for the protection of personal data does not have the competence to substantively assess the correctness of actions The District Court or the Opinion Team of Judicial Specialists. In the judgment of the Supreme Administrative Court of March 2, 2001 (file no. 11 SA 401/00), it was emphasized that: "The Inspector General (...) is not an authority controlling or supervising the correct application of substantive and procedural law in matters belonging to the properties of other bodies, services or courts whose decisions are subject to review in the course of the instance or otherwise determined by appropriate procedures. "

In conclusion - in the above case, nothing can be done to assess the substantive actions of the District Court or the Opinion

Team of Judicial Specialists as to the basis for employment in the Opinion Team of Judicial Specialists, the lack of consent of the President of the Court for additional employment and the unlawfulness of admitting Ms MG to the opinion, because the President of the Office for Personal Data Protection does not has competence to substantive evaluation, activities other than those related to the protection of personal data.

Pursuant to Art. 7 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), the decision may be appealed against by the party to the Provincial Administrative Court in Warsaw, within 30 days from the date of delivery to her side. The complaint is lodged through the President of the Office (address: ul. Stawki 2, 00-193 Warsaw). 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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