THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 20

February

2020

DECISION

ZKE.440.67.2019

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. 160 sec. 1, 2 and 3 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), art. 12 point 2 and art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 6 sec. 1, art. 57 sec. 1 lit. a), lit. f) Regulation (EU) 2016/679 of the European Parliament and of the Council 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 protection of personal data) (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, p. 2), in connection with Art. 106d and art. 106c of the Banking Law Act of August 29, 1997 (Journal of Laws of 2018, item 2187, as amended), after conducting administrative proceedings regarding the complaint of Mrs. Legal MJ, for the processing of her personal data by BSA, the President of the Office for Personal Data Protection,

refuses to accept the request

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mrs. B. ”, consisting in entering into database A [...] false information in connection with the applicant's business activity. As indicated by the attorney of the complainant in database A, personal data of Ms A. O. are processed as a person running a business under the name: "A". The information "the company does not exist" appears next to the company data. Due to a false entry, the Complainant cannot obtain a loan because this information causes a negative verification result. The entry made is inconsistent with the facts because the complainant has been running the company continuously since May 2015.

In the content of the complaint, the representative of the Complainant demands that the data protection authority take actions

aimed at:

1. Providing the complainant with the data of the entity that provided B. the request for entering the data concerning Ms A. O. running a business under the name: P. with the entry "the company does not exist" in database A.

2. Removal of the entry concerning the complainant from database A.

In the course of the proceedings conducted in this case, the President of the Personal Data Protection Office established the following facts.

1. The findings made on the basis of information from the Central Register and Information on Economic Activity of the Republic of Poland, hereinafter also "CEIDG" (www.firma.gov.pl) showed that Mrs. ...] April 2013 under different names: P., A., Pr., Pe., F. Currently, the complainant no longer conducts business activity. This activity on [...] January 2018 was removed from the CEIDG.

2. B. processes the personal data of Mrs. A. O. pursuant to art. 106d in connection with Art. 106e of the Act of August 29, 1997 Banking Law (Journal of Laws of 2019, item 2357), hereinafter also the "Banking Law".

3.B.before May 25, 2018, Ms A. O. refused to disclose information about her data processed in database A, including information about the source from which these data come, pursuant to art. 106d of the Banking Law in connection with Art. 34 sec. 2 of August 29, 1997 on the protection of personal data (Journal of Laws of 2016, item 922, as amended), hereinafter also referred to as the "Personal Data Protection Act of 1997". However, after May 25, 2018, Art. 106d and art. 106e of the Banking Law in connection with Art. 15 of the Regulation (EU) 2016/679 of the European Parliament and of the Council 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 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, p. 2), hereinafter referred to as "Regulation 2016/679".

4. Currently in database A, as a result of data correction made by B., for the entity with the tax identification number [...], there is an entry named "entity entered into the database for further monitoring".

After analyzing the evidence collected in the case, the President of the Office for Personal Data Protection states as follows.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) entered into force, hereinafter also: the Act on the Protection of Personal Data of 2018.

Pursuant to Art. 160 sec. 1-3 of the Act on the Protection of Personal Data of 2018, proceedings conducted by the Inspector

General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, are conducted by the President of the Office for Personal Data Protection on the basis of the Personal Data Protection Act of 1997 r., in accordance with the principles set out in the Code of Administrative Procedure. At the same time, the activities performed in the proceedings initiated and not completed before the date of entry into force of the provisions of the Act on the Protection of Personal Data of 2018 remain effective. From May 25, 2018, "Regulation 2016/679" also applies.

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted on the basis of the Act on the Protection of Personal Data of 1997 (with regard to the provisions governing the administrative procedure) and on the basis of Regulation 2016/679 (in the scope determining the legality of the processing of personal data).

The President of the Personal Data Protection Office is the competent authority for the protection of personal data and the supervisory authority within the meaning of Regulation 2016/679 (Article 34 (1) and (2) of the Act on the Protection of Personal Data of 2018). The President of the Personal Data Protection Office conducts proceedings regarding infringement of the provisions on the protection of personal data (Article 60 of the Personal Data Protection Act of 2018), and in matters not covered by the Personal Data Protection Act of 2018, administrative proceedings before the President of the Personal Data Protection Office, in particular, the provisions of the Code of Administrative Procedure (Article 7 (1) of the Act on the Protection of Personal Data of 2018) regulated in Chapter 7 of the Act - proceedings on infringement of provisions on the protection of personal data.

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks specified under this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (point a) and considers complaints submitted by the data subject or by - in accordance with Art. 80 by Regulation 2016/679 - the entity, organization or association, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and results of these proceedings within a reasonable time (point f).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the actual state of affairs 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 the 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). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 stated that: "when examining 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 on the matter and whether it is done in a legal manner".

Pursuant to the wording of Art. 23 sec. 1 of the Act on the Protection of Personal Data of 1997, in force during the period covered by the complaint of the Complainant, the processing of personal data was permissible when: the data subject consents to it, unless it concerns the deletion of data relating to him (point 1), it is necessary to exercise the right or fulfill the obligation resulting from a legal provision (point 2), it is necessary for the performance of the contract when the data subject is a party to it or when it is necessary to take action before concluding the contract upon request the data subject (point 3) is necessary to perform tasks specified by law for the public good (point 4), it is necessary to fulfill legally justified purposes pursued by data controllers or data recipients, and the processing does not violate the rights and freedoms of the person the data subject (point 5).

However, according to Art. 34 of the Act on the Protection of Personal Data of 1997, the data controller refuses the data subject to provide the information referred to in art. 32 sec. 1 paragraphs 1-5a, if this would result in: 1) disclosure of messages containing classified information; 2) a threat to the state defense or security, human life and health, or public safety and order; 3) a threat to the basic economic or financial interest of the state; 4) significant infringement of personal rights of data subjects or other persons.

Pursuant to the provisions currently in force (from May 25, 2018, i.e. from the date of application of the provisions of Regulation 2016/679), the processing of personal data is lawful when the data controller has at least one of the ones specified in art. 6 sec. 1 of Regulation 2016/679, the material premises for the processing of personal data. According to the above-mentioned provision, the processing of personal data is lawful only if one of the following conditions is met: a) the data subject has consented to the processing of his personal data for one or more specific purposes; b) processing is necessary for

the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; d) processing is necessary to protect the vital interests of the data subject or of another natural person; e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; f) processing is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular, when the data subject is a child.

On the other hand, the right of access by the data subject is governed by Art. 15 of the Act on the Protection of Personal Data of 1997, pursuant to which the data subject is entitled to obtain from the administrator confirmation whether personal data concerning him or her are being processed, and if so, to obtain access to them and the following information: a) the purposes of the processing; b) the categories of personal data concerned; c) information on the recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular on recipients in third countries or international organizations; d) if possible, the planned period for which the personal data will be stored, and if this is not possible, the criteria for determining this period; e) information on the right to request the administrator to rectify, delete or limit the processing of personal data relating to the data subject and to object to such processing; f) information on the right to lodge a complaint with the supervisory authority; g) if the personal data have not been collected from the data subject, any available information as to their source; h) information on automated decision making, including profiling referred to in art. 22 sec. 1 and 4, and - at least in these cases - relevant information about the rules for their taking, as well as the significance and envisaged consequences of such processing for the data subject.

The legal act containing detailed regulations regarding the processing of personal data of bank customers and B. in connection with banking activities is primarily the Banking Law.

Based on Article. 106d paragraph. 1 of the Banking Law, banks, other institutions legally authorized to grant loans, clearing houses established pursuant to Art. 67, institutions established pursuant to Art. 105 paragraph. 4, loan institutions, entities whose core business is to provide assets under a leasing agreement, and entities referred to in article 1. 59d of the Act of 12 May 2011 on consumer credit, may process and share information, including information covered by banking secrecy, in the following cases: 1) reasonable suspicions referred to in art. 106a paragraph. 3; 2) reasonable suspicions of committing crimes

to the detriment of banks, other institutions legally authorized to grant loans, credit institutions, financial institutions, lending institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit, and their customers, for the purpose and to the extent necessary to prevent these crimes; 3) performing duties in the scope specified in the provisions on counteracting money laundering and terrorist financing.

The entities referred to in paragraph 1. 1 may process and share information, including information covered by banking secrecy and information on convictions, in cases of crimes committed to the detriment of banks, other institutions legally authorized to grant loans, financial institutions, loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit and their clients, for the purpose and to the extent necessary to prevent these crimes (Article 106d (2) of the Banking Act).

As can be seen from the factual findings, B. pursuant to Art. 106d paragraph. 1 of the Banking Law, currently processes in database A the data of the complainant using the tax identification number [...] with the content "entity entered into the database for further monitoring".

However, the right of access by the data subject referred to in Art. 15 of the Regulation 2016/679, pursuant to art. 106e of the Banking Act is excluded from its application. Pursuant to Art. 106e of the Banking Law, to the processing of personal data by banks, other institutions legally authorized to grant loans and institutions established on the basis of art. 105 paragraph. 4, loan institutions, entities whose core business is to provide assets under a leasing agreement, and entities referred to in article 1. 59d of the Act of 12 May 2011 on consumer credit, the provision of art. 15 of the Regulation 2016/679 shall not apply to the extent that it is necessary for the proper implementation of tasks related to counteracting money laundering and terrorist financing, in accordance with art. 106, and crime prevention, in accordance with art. 106a and art. 106d.

Therefore, in the light of the current regulations (both the provisions on the protection of personal data and the provisions of the Banking Law), the rights of the data subject are limited in certain situations. Pursuant to Art. 15 of Regulation 2016/679, the data subject has certain rights in relation to the administrator, including, inter alia, the right to information about the data source (point g)) from which the data was obtained. However, according to Art. 106e of the Banking Law to the processing of personal data by banks, other institutions legally authorized to grant loans and institutions established on the basis of art. 105 paragraph. 4, loan institutions, entities whose core business is to provide assets under a leasing agreement, and entities referred to in article 1. 59d of the Act of 12 May 2011 on consumer credit, the provision of art. 15 of the Regulation 2016/679

shall not apply to the extent that it is necessary for the proper implementation of tasks related to counteracting money laundering and terrorist financing, in accordance with art. 106, and crime prevention, in accordance with art. 106a and art. 106d.

It should also be emphasized that due to the nature and purpose of data processing referred to in Art. 106d of the Banking Law, shaping the general right to process and make available to other banks information covered by banking secrecy (the purpose understood as prevention against crimes committed to the detriment of banks and bank customers), collecting such data may not result in B. criminal about the processing of their personal data. Adopting a different position would deprive Art. 106d of the Banking Law, and would expose the administrator to the accusation of obstruction of the criminal proceedings conducted against these persons.

Moreover, the information collected by banks and submitted to database A, classified as attempts at extortion and similar cases, is information the disclosure of which could lead to a breach of security and public order (to the detriment of banks and the security of funds accumulated in them), therefore B. had the right to refuse the data subject to provide information on the data of the entity that initiated the entry concerning the complainant in database A.

To sum up, the processing of the Complainant's data by B. was justified both in the provisions of the Personal Data Protection Act of 1997 and in the currently applicable Regulation 2016/679, because B. is currently processing the Complainant's personal data pursuant to Art. 6 sec. 1 point c) of Regulation 2016/679 in connection with art. 106d and art. 106c of the Banking Law. Thus, the allegation that this activity is unlawful from the point of view of the provisions of Regulation 2016/679 should be considered unfounded.

Therefore, there are no grounds for issuing an administrative decision ordering the removal of the complainant's personal data by B. from database A and the disclosure by B. to the complainant of the name of the entity that requested the entry concerning Ms A. O. (NIP [...]). In this situation, B. a breach of the provisions of Regulation 2016/679 in this respect cannot be attributed and it is not justified to issue any of the orders referred to in art. 58 of the Regulation 2016/679.

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

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery 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, 00-93 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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