

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 29

May

2019

## DECISION

ZSOŚS.440.29.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 12 point 2, 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. 100 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), after conducting administrative proceedings regarding the complaint of Mr. D. B., residing in in S., for the processing of his personal data by the Chief Road Transport Inspector,

I refuse to accept the application

### Justification

The Office for Personal Data Protection received [...] October 2018 via e-mail a complaint by Mr. D. B., residing in in S. (hereinafter the "Complainant"), regarding the processing of his personal data by the Chief Inspector of Road Transport (hereinafter "GITD").

In the complaint, the complainant indicated that he had received a written document from GITD in the form of a penalty notice containing his personal data. The complainant submitted that he had never consented to the processing of his personal data by the General Inspectorate of Road Transport, and that "(...) Art. 129 g of paragraph 1. 4 of the Road Traffic Act of June 20, 1997, on the basis of which the Regulation of the Minister of Transport, Construction and Maritime Economy of April 23, 2013 on images and data recorded by the Chief Road Transport Inspector using stationary recording devices was issued installed in the road lane of public roads - has expired, thus the Chief Inspector of Road Transport processes (...) the complainant's personal data without any basis. The complainant also mentioned that he had not received a reply to his request to the General Inspectorate of Road Transport regarding the indication of the legal basis for the processing of his personal data. In response to the complaint, the President of the Personal Data Protection Office (hereinafter "the President of the Personal

Data Protection Office") called on the Complainant in a letter of [...] November 2018 to remedy its formal deficiencies by:

- indication of the address of residence, registration, stay or correspondence,
- indication of the categories of personal data to which the violation reported in the complaint relates,
- clarification of the actions to be taken, based on the provisions of law, the Complainant expects from the President of the Personal Data Protection Office.

The complainant, in a letter of [...] November 2018, sent to the President of the Personal Data Protection Office (UODO) as a remedy for formal defects in the complaint, indicated his correspondence address, pointing out that it was also a category of personal data processed by GITD - in the complainant's opinion - without a legal basis, next to his other data, i.e. name and surname, ID card number and PESEL number, indicated in the letter of [...] October 2018.

In the course of the proceedings initiated as a result of the complaint, the President of the Personal Data Protection Office (hereinafter "the President of the Personal Data Protection Office") obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

In a letter of [...] April 2019, as a result of the initiation of the complaint procedure, the President of the Personal Data Protection Office requested GITD to submit written explanations, and in particular to indicate whether, and if so, on what legal basis, from what source and to what extent GITD obtained the complainant's personal data, as well as whether, and if so, on what legal basis, for what purpose and to what extent GITD processes the complainant's personal data, in particular the data concerning the proceedings in the case marked: [...]

In response to the letter of the President of the Personal Data Protection Office, GITD replied in a letter of [...] April 2019 (reference number [...]), in which it explained that the Complainant's personal data were processed by GITD in connection with the fact that the Complainant had committed [...] May 2018, a road offense consisting in exceeding the speed limit in road traffic. This offense was recorded with an automatic recording device (the so-called speed camera), as a result of which the complainant's personal data was obtained and processed. In its letter, the General Inspectorate of Road Transport informed the President of the Personal Data Protection Office that proceedings concerning registered traffic offenses with the use of stationary recording devices are conducted pursuant to Art. 54 of the Act of August 24, 2001, the Code of Conduct in Petty Offenses (Journal of Laws of 2018, item 475, as amended) and, respectively, on the basis of the provisions of the Act of June 6, 1997 - Code of Criminal Procedure (Journal of Laws of 2018, item 1987, as amended). As a result of the proceedings, the

General Inspectorate of Road Transport issued the Complainant with a penalty notice containing his personal data. In the above-mentioned In a letter of [...] April 2019, the General Inspectorate of Road Transport also explained that "In cases of offenses disclosed with the use of recording devices, the Chief Inspectorate of Road Transport processes personal data pursuant to Art. 129a paragraph. 1 point 3 lit. b) and art. 129g and 129h of the Road Traffic Act of June 20, 1997 (Journal of Laws of 2018, item 1990, as amended). "

In turn, in the letter of [...] October 2018, sent by GITD to the Complainant (a copy of the letter attached as evidence to the letter with GITD's explanations of [...] April 2019), it was indicated that "The basis for the functioning of the Automatic Center Road Traffic Supervision, including the conduct of explanatory activities, is the Road Transport Act (Journal of Laws 2017, item 1260, as amended), the Act - Road Traffic Law (Journal of Laws 2017, item 1260, as amended). ), The Code of Conduct in cases of petty offenses (Journal of Laws 2018, item 475, as amended) and the regulation of the Prime Minister of June 29, 2011 on granting inspectors of the Road Transport Inspection and employees of the General Road Transport Inspectorate the power to impose fines by way of a penalty notice (Journal of Laws of 2013, item 1330). ". Moreover, in the above-mentioned In a letter to the Complainant, GITD informed that "The data is processed in order to perform the statutory tasks of the Administrator pursuant to the provisions of law, in particular: art. 50 of the Road Transport Act. "

In such a factual and legal state, the President of UODO considered the following:

The aforementioned Act of August 29, 1997 on the Protection of Personal Data (hereinafter referred to as "the Personal Data Protection Act") creates the legal grounds for applying 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, assessing the status of the case and subsuming, determines 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 of the PDA and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the application, 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 Act on Personal Data Protection, everyone has the right to the protection of personal data concerning

him, and the processing of such data, as referred to in art. 7 point 2 of the Personal Data Protection 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 in mind the above, therefore, when applying the provisions of the Personal Data Protection Act, it is necessary to weigh the underlying goods each time.

In this case, the content of Art. 23 sec. 1 point 2 of the PDPA, which states that data processing is permissible when it is necessary to exercise the right or fulfill an obligation resulting from a legal provision. The President of UODO shares the view of GITD that the legal basis for the processing by GITD of personal data of persons who violated the provisions of the Road Traffic Act are primarily the provisions of the Road Traffic Act of 20 June 1997 (Journal of Laws of 2018, item 1990, as amended) and the Act of 6 September 2001 on road transport (Journal of Laws of 2019, item 58, as amended). Pursuant to Art. 129 g of paragraph 1. 1 of the Act on Road Traffic, the tasks of the Road Transport Inspection include the disclosure of violations of road traffic regulations by means of stationary recording devices installed in the road lane of public roads, consisting in, inter alia, exceeding the speed limit. In addition, when performing the tasks referred to above, in accordance with Art. 129 g of paragraph 1. 2 points 1 and 2 of the Road Traffic Act, Road Transport Inspection:

records images of violations of road traffic regulations and processes, for the purposes specified in this Act, the image of the vehicle with the violation of road traffic regulations, and the image of the vehicle driver, if it has been registered, and data including the registration number of the infringed vehicle, date, time and place of commission infringements, type of infringement, data of the owner or holder of the vehicle or the vehicle driver, and the identification number of the recording equipment,

in proceedings in cases of offenses referred to in para. 1, conducts explanatory activities, submits motions for punishment to the court, accuses before the court and lodges appeals - in the manner and scope specified in the Act of August 24, 2001 - Code of Procedure for Petty Offenses (Journal of Laws of 2018, . items 475, 1039, 1387, 1467 and 1481).

The basis for the processing of the complainant's personal data by GITD is also art. 55a paragraph. 1 of the Act of 6 September 2001 on road transport (Journal of Laws of 2019, item 58, as amended). According to its content, "To the extent necessary to perform the tasks specified in the Act and separate provisions, the Inspection processes personal data (...)". In addition, GITD is authorized to process the above-mentioned data on the basis of the Regulation of the Prime Minister of 29 June 2011 on granting inspectors of the Road Transport Inspection and employees of the General Road Transport

Inspectorate the power to impose fines by way of a penal mandate, which is an implementing legal act to the Act of 24 August 2001 - Code of conduct in misdemeanor cases (Journal of Laws of 2018, items 475, 1039, 1387, 1467 and 1481).

The wording of the above-mentioned provisions shows that not only is GITD legally entitled to process the personal data of the owner or owner of a vehicle that has violated the road traffic regulations in the form of exceeding the speed limit, but also the consent of the above-mentioned persons due to the fact that this processing falls within the scope of tasks and competences of GITD defined by the Act.

Referring to the Complainant's allegation that GITD did not have the right to process his personal data due to the loss of binding force of Art. 129 g of paragraph 1. 4 of the Road Traffic Act of June 20, 1997 (Journal of Laws of 2018, item 1990, as amended), it should be stated that it is unfounded. This provision was only a statutory delegation to issue the regulation of the Minister of Transport, Construction and Maritime Economy of 23 April 2013 on images and data recorded by the Chief Road Transport Inspector using stationary recording devices installed in the road lane of public roads, but neither he nor the regulation issued under it did not constitute the essential legal basis for the imposition of fines by means of a criminal mandate or for the processing of personal data in this connection. The provisions of the above-mentioned regulation only specified the method, procedure and technical conditions for the collection, processing, sharing and removal by GITD of recorded images and data in cases of violations of road traffic regulations, without constituting the basis for GITD's powers in this regard. On the other hand, this is based on the remaining statutory provisions cited above in the justification to this decision.

It should also be pointed out that the fact that the Complainant did not receive - according to his statement - a reply from the General Inspectorate of Road Transport to the inquiries he sent regarding the processing of personal data, does not change the fact that the General Inspectorate of Road Transport replied to the Complainant twice, sending him letters of [...] October 2018 and of [...] November 2018. This fact was confirmed by the General Inspectorate of Road Transport by attaching to its explanations copies of the above-mentioned writings.

Bearing in mind the above and acknowledging the correctness of the explanations provided by GITD, it should be stated that this authority has a legal basis for the processing of the complainant's personal data.

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

Pursuant to Art. 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), the party 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 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.

2019-05-30