THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 05

May

2020

DECISION

ZKE.440.10.2019

Based on Article. 104 § 1 and art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256), art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) in connection with 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) in connection with Art. 28, art. 32 sec. 1 and art. 57 sec. 1 lit. a) and 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 (Journal EU L 119 of May 4, 2016, p. 1 and EU Official Journal L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding the complaint of Ms AS and Mr. M.S., for improper protection and disclosure of their personal data to persons not authorized by Mr. K.B., as the manager of the Housing Community [...], operating under the name Przedsiębiorstwo Produkcyjno Handlowo Usługowe A., President of the Personal Data Protection Office:

1. It discontinues the proceedings regarding the application submitted by Mr. M. S.; 2. As to the remainder, it refuses to accept the application.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly: the Inspector General for Personal Data Protection) received a complaint from Ms AS and Mr MS (hereinafter referred to as: "Complainants") about incorrect protection and disclosure of their personal data to persons unauthorized by Mr KB, the Administrator of the Housing Community [...] , operating under the name Przedsiębiorstwo Produkcyjno Handlowo Usługowe A., (hereinafter referred to as: PPHU A.).

In the content of the complaint, the complainants indicated that the Administrator called them to submit to his seat a copy of the notarial deed concerning the apartment located in B., owned by the complainants. The above was due to the fact that an error concerning the measurement of its area was detected in the premises, as a result of which an amendment to the notarial

agreement of 2000 was prepared, a copy of which was provided by the Complainants to the Administrator in order to convert the advance payments towards maintenance fees, renovation fund and utilities. At the time of the request to return the above-mentioned of the document, the applicants were informed of its loss. In the opinion of the Complainants, the above indicates that the security measures applied by the Administrator regarding their personal data are insufficient, which makes these data vulnerable to disclosure to unauthorized persons. In the opinion of the Complainants, the Administrator violates the provisions on the protection of personal data, because its employees process personal data without the appropriate authorizations. Moreover, the personal data processing agreement concluded between the Housing Community [...] and the Administrator is defective because it was not signed by the person authorized to represent the Administrator.

In connection with the allegations, the Complainants applied to the President of the Personal Data Protection Office for an administrative decision prohibiting Mr. KB from disclosing their personal data to other entities or natural persons, as well as employees of PPHU A. personal data and an explanation of what happened with the photocopy of the correction of the notarial deed handed over to the administrator in November 2007.

In order to establish the factual circumstances relevant to the resolution of this case, the President of the Office for Personal Data Protection initiated administrative proceedings. On the basis of the evidence collected in the case, he established the following facts:

The administrator of the complainants' personal data is the Housing Community [...], hereinafter referred to as: "the Housing Community".

On the basis of the agreement of […] March 2005 for the management of the common real estate, the Housing Community appointed K. B., operating under the name Przedsiębiorstwo Produkcyjno Handlowo Usługowe A., the Administrator of the common real estate.

On [...] February 2016, the Housing Community concluded an agreement with the Administrator to entrust the processing of personal data (then updated on [...] May 2018), in order to implement the statutory and contractual obligations under Art. 29 sec. 1b of the Act of June 24, 1994 on the ownership of premises (Journal of Laws of 2020, item 532), on the basis of which the Administrator was authorized to process data held by the Community, i.e. owners' data included in the lists of owners, data resulting from from the content of land and mortgage registers for premises and data from settlement files, solely for the purpose resulting from the agreement and the act on ownership of premises - in the period from [...] March 2005 until the

termination of the agreement for the management of common property. In accordance with the provisions of the entrustment agreement, the Administrator, as a processor, undertook to secure the processed personal data by applying appropriate technical and organizational measures ensuring an adequate level of security corresponding to the risk related to the processing of personal data referred to in art. 32 of 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 (Journal UE L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2). In addition, the above-mentioned undertook to exercise due diligence in the processing of the entrusted personal data. In particular, he stated that he had given the authorization to process personal data to all persons who will process the entrusted data in order to perform the contract in question (§ 3 points 1 and 2 of the updated entrustment agreement).

The manager employs three employees: Ms B. J. as an accountant, Mr K. B. as an assistant manager and Ms B. P. as a secretariat manager. All of the above-mentioned are authorized to process personal data for purposes related to the performance of official duties (a copy of the authorizations in the case files).

In the explanations submitted to the President of the Personal Data Protection Office, the Administrator indicated that (quoted): "pursuant to Art. 29 sec. 1b [of the Act on Ownership of Premises] it follows that the management board or manager entrusted with the management of the joint property (...) is obliged to draw up a report on the takeover of the property and its technical documentation (construction, as-built and construction book) on behalf of the housing community, keep the technical documentation of the building and maintain and update a list of owners of premises and their shares in the common property. (…) For the proper performance of their duties (…) the management or manager of the community must have access to documents relating to the premises that are part of it, as well as to the personal data of their owners. The administrator of the shared property is therefore not only authorized but also obliged to collect personal data about the owners of the premises. The consent of the co-owners to the processing of data in this case is not required, because the processing of their personal data takes place on the basis of specific legal provisions and is necessary for the management of a common property ". At the same time, the Administrator assured that PPHU A. does not keep any register or collection of notarial deeds and does not store such documents in any collection, because it is completely unnecessary due to the general access to the teleinformation system made available by the Ministry of Justice - Electronic Land Registry, in which after entering the number of the land and

mortgage register of the common real estate, you can find references to the numbers of the land and mortgage registers of individual residential premises. In this way, the Administrator can independently obtain data on the numbers of the premises, their area, names and surnames of the owners, their PESEL numbers and the names of their parents.

The manager also ensured that he applies sufficient security measures to protect the lists of owners and settlements of individual apartments against unauthorized disclosure or disclosure. Pursuant to the Security Policy adopted by the Administrator of [...] September 2015 (a copy of the document in the case files), personal data processed by PPHU A. to the extent resulting from the activities of the real estate management are collected and processed only at the Administrator's seat and in customer service office. These data are stored […].

In the provided explanations, the Administrator indicated that he had never disclosed the Complainants' personal data to any entities or third parties. There was also no risk of transferring such data or their inadequate protection. On the other hand, referring directly to the applicants 'submissions, the above-mentioned argued that (quoted): “the applicants' allegations that their notarial deed had been copied are untrue. In a situation where in the community […] there was a correction of shares, the owners themselves came to the administrator's office on their own initiative in order to update the inventory of owners and shares. Mr. and Mrs. S. did not leave the deed, but only presented it to confirm that they had a changed surface of the premises. The current allegations about the alleged copying of the act and its detention or disclosure to unauthorized persons are groundless and are only part of the overall activities of those persons who constantly inform all possible institutions and bodies about various situations regarding the administrator that prove to be unjustified. "

In the course of the proceedings, the President of the Office for Personal Data Protection obtained ex officio information about the death of the Complainant, Mr. MS. factual, the President of the Personal Data Protection Office (hereinafter also referred to as: "the President of the Personal Data Protection Office") considered the following.

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), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Personal Data Protection Act, 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 Personal Data Protection Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended), hereinafter also referred to as the "1997 Act", in accordance with the principles

set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256), hereinafter referred to as "kpa". At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on

From May 25, 2018, also Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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 / WE (EU Official Journal L 119 of 04.05.2016, p. 1 as amended and EU Official Journal L 127 of 23.05.2018, p. 2), hereinafter referred to as "Regulation 2016/679".

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks specified under it, each supervisory authority on its territory monitors and enforces the application of this regulation (letter a) and considers complaints brought by the data subject or by an authorized by him - 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).

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 of August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure) and on the basis of the Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The manner of conducting proceedings in cases initiated and pending before the date of entry into force of new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which “a public administration body assesses the actual state of the case according to the date of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance ”(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071), M. Jaśkowska, A. Wróbel, Lex., El / 2012).

At the outset, i.e. before making a substantive analysis of the complaint being the subject of these proceedings, it should be indicated that a circumstance occurred that had a significant impact on the decision issued in the case. The President of UODO learned about the death of Mr. M. S., who was one of the Complainants. This circumstance is undisputed and was confirmed by an abridged copy of the death certificate in the case file.

Considering the applicable provisions in the field of administrative procedure, in relation to the above-mentioned findings, the President of the Personal Data Protection Office was obliged to discontinue the administrative proceedings in the scope of the application submitted by the Complainant. According to Art. 105 § 1 of the Code of Civil Procedure, when the proceedings for any reason have become redundant in whole or in part, the public administration body issues a decision to discontinue the proceedings, respectively, in whole or in part.

As indicated in the justification of the judgment of June 7, 2019 (reference number II FSK 2113/16), the Provincial Administrative Court in Kraków: a provision 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 deciding on its substance. The redundancy of the proceedings may result from reasons that can be divided into subjective reasons, e.g. death of a party (natural person) in the course of the proceedings, which aimed at specifying rights or obligations of a strictly personal and non-hereditary nature (...) and objective reasons - when the case was not and is not subject to an administrative decision. "

In the light of the cited jurisprudence, it should be assumed that an essential condition for discontinuation of the proceedings is undoubtedly the loss by the entity participating in the proceedings (in this case by the Complainant) of the features specified in Art. 28 of the Code of Civil Procedure, according to which everyone is a party, whose legal interest or obligation is related to the proceedings, or who requests the actions of an authority because of their legal interest or obligation. Thus, the effect of discontinuation of the proceedings is caused by the death of the Complainant, if the administrative matter concerns rights directly related to him. In the doctrine and jurisprudence, it is uniformly stated that the death of a natural person causes the loss of legal capacity, the consequence of which is that administrative proceedings cannot be initiated and conducted against the deceased, as well as decisions cannot be made in the proceedings already instituted. Such a decision would grossly violate the law (see Resolution of the Supreme Administrative Court of September 22, 1997, file reference number FPS 6/97, publ. ONSA 1998/1/1; judgments of the Supreme Administrative Court: of September 20, 2002, file reference number I SA 428/01; of March 11, 2008, file reference number I OSK 1959/06; of September 30, 2009, file reference number I OSK 1429/08; of July 1, 2011, file reference number act I OSK 1261/10). There is no doubt that the administrative proceedings conducted in this case, initiated, inter alia, by Mr. M. S.'s complaint concerned rights directly related to his person, and therefore the authority was obliged to discontinue the proceedings in relation to the request of this particular applicant.

On the other hand, referring to the content of the allegations raised by the second of the Complainants, Ms A. S., the President

of UODO took the position that the extensive evidence gathered in the case did not allow for their validity to be confirmed. It should be emphasized that in accordance with the principle of objective truth expressed in Art. 7 of the Code of Civil Procedure, in the course of the proceedings, public administration bodies uphold the rule of law and take all steps necessary to thoroughly clarify the facts and to settle the matter, bearing in mind the public interest and the legitimate interest of citizens. When issuing an administrative decision, a public administration body may consider the facts of the case under consideration as established solely on the basis of clear and unequivocal evidence. Supreme Administrative Court in the judgment of July 9, 1999, file ref. III SA 5417/98, stated that: "the authority conducting the proceedings must seek to establish the substantive truth and, according to its knowledge, experience and internal conviction, assess the probative value of individual evidence, the impact of proving one circumstance on other circumstances". After exhausting the possibilities of making the factual findings necessary to make a decision, the authority conducting the proceedings is entitled and even obliged to accept such a version of events that logically corresponds to the evidence collected.

In the opinion of the President of the Personal Data Protection Office, a comprehensive analysis of the evidence gathered in the case, including in particular the parties' positions and the documentation presented in support of them, did not give rise to the conclusion that the administrator of the property located in B. has breached the provisions on the protection of personal data, consisting in inadequate protection and unlawful disclosure of the complainant's personal data to entities or persons not authorized to process them. Although the complainant pointed out that she had submitted to the Administrator's office a copy of the correction of the notarial deed concerning the dwelling owned by her, the above is inconsistent with the logical and consistent with other evidence explanations of the Administrator, who strongly denied that he made copies of the data contained in the above-mentioned document . As pointed out by Mr. KB, when the shares were adjusted in the Housing Community [...], the owners of flats, including the complainant, on their own initiative appeared at the Administrator's office in order to present a notarial deed which resulted in the change of the flat's area, which allowed for quick updating of the inventory of owners and shares. However, the manager did not collect the documents presented to him from the interested parties, did not make copies of them, and did not store or make them available to unauthorized persons.

In the opinion of the President of the Personal Data Protection Office, the argumentation presented by the Administrator is consistent with the fact that all information regarding the list of owners and their shares in the shared property, the collection of which by the Administrator is legalized by the provisions of the Act of 24 June 1994 on the ownership of premises, is available

in Elektroniczne Land and Mortgage Registers, there is therefore no need to collect this data in a paper version. Such an action of the Administrator would not find any factual justification.

However, as is clear from the clear findings of fact, the Housing Community [...], being the administrator of personal data of its residents, entrusted the Administrator on the basis of a written agreement of [...] February 2016, in order to implement the statutory and contractual obligations under Art. . 29 sec. 1b of the Act of June 24, 1994 on the ownership of premises, the processing of personal data held by the Community, i.e. the data of the owners included in the lists of owners, data resulting from the content of land and mortgage registers for premises and data from settlement files. The parties agreed that the agreement was to apply retroactively from […] March 2005 (ie from the moment the parties concluded the agreement for the management of the common property) until its termination - which, however, did not take place until the date of this decision.

The processing of personal data was entrusted in accordance with the provisions on the protection of personal data, based on the norm resulting from art. 31 of the 1997 Act. Currently, it is based on Art. 28 of Regulation 2016/679, according to which the controller may entrust another entity by means of a concluded contract or other legal instrument, which are subject to European Union law or the law of a Member State and are binding on the processor and the controller, and define the subject and duration of processing, the nature and purpose of processing , type of personal data and categories of data subjects, obligations and rights of the controller. The processor is obliged to provide sufficient guarantees for the implementation of appropriate technical and organizational measures so that the processing meets the requirements of Regulation 2016/679 and protects the rights of the data subjects.

The specification of the above-mentioned obligation is materialized in the content of Art. 32 of Regulation 2016/679, according to which the data controller and the processor, taking into account the state of technical knowledge, the cost of implementation and the nature, scope, context and purposes of processing as well as the risk of violating the rights or freedoms of natural persons with different probability and severity, implement appropriate technical measures and organizational to ensure the degree of security corresponding to this risk. As an example of such action, the EU legislator indicated, inter alia, on the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.

In the opinion of the President of the Personal Data Protection Office, the evidence collected in this case showed that the Administrator, as a processor, took care of the proper protection of the processed personal data. In accordance with the Security Policy in force and applied by him, data collected in paper and electronic form are stored [...]. All employees employed

by the Administrator have valid authorizations to process personal data entrusted to him by the Housing Association. At the same time, they are obliged to keep secret information obtained in the course of employment, both during the employment relationship and after its termination.

In the opinion of the President of the Personal Data Protection Office, the measures applied by the Administrator are sufficient and guarantee the proper protection of the processed personal data of the Complainant. Therefore - in the absence of reliable evidence to the contrary - it is impossible to assume that the collected evidence indicates the possibility of inadequately securing the data being processed by the processor, or making it available to unauthorized persons.

In this context, the supervisory authority found the written statement of Ms WG, the owner of a flat in B., in which the above-mentioned stated that in November or December 2007 her neighbor, Ms AS, in her presence, provided Mr. in the office of PPHU A. a copy of the correction of the notarial deed in order to correct the information on the area of the premises and the shares in the common property. It should be noted that the statements of Ms WG have already been the subject of an analysis and evaluation carried out by the President of the Personal Data Protection Office in the administrative proceedings initiated by the President of the Personal Data Protection Office against improper protection and disclosure of her personal data (and also the data of her husband, JG) to persons unauthorized by Mr. KB, the administrator of the Community Mieszkaniowa [...], running a business under the name PPHU A. Legally binding decision of [...] June 2019, file ref. [...] relying on the facts analogous to the present case, the President of UODO refused to accept the request.

In connection with the findings, it should be noted that the continuation of administrative proceedings by the President of Personal Data Protection, initiated by a complaint about irregularities in the processing of the complainant's personal data by the real estate administrator in B., aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act is unfounded.

According to the wording of the above-mentioned of the provision, in the event of a breach of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the lawful state, in particular: removal of deficiencies (1), supplementing, updating, rectification, disclosure or non-disclosure of personal data (2), application of additional security measures for the collected personal data (3), suspension of the transfer of personal data to a third country (4), data protection or transfer to other entities (5) or deletion of personal data (6) . From the wording of Art. 18 sec. 1 of the Act of 1997, and at the

same time from the definition of an administrative decision - as an act decisive in a ruling manner about the rights and obligations of the parties to the proceedings in the factual and legal status established and valid at the time of its issuance - it follows that the personal data protection authority does not assess past events, no continued at the time of adjudication. The decision of the President of the Personal Data Protection Office (UODO) is an instrument to restore lawfulness in the data processing process carried out at the time of issuing the decision.

Taking into account the above, it should be stated that there are no grounds for formulating the order referred to in Art. 18 sec. 1 of the act, because the complainant's personal data are processed by the real estate administrator in accordance with the law, and in the course of the proceedings no irregularities were revealed that would indicate the possibility of their unlawful disclosure or disclosure to unauthorized persons. Due to the above, the administrative proceedings in the present case should have been concluded with a decision refusing to grant the applicant's request.

The President of the Personal Data Protection Office points out that the possible regulation on the grounds that the complainant may seek legal protection and pursue her claims is the Act of 23 April 1964 Civil Code (Journal of Laws of 2019, item 1145), hereinafter referred to as "the Civil Code ". According to the content of Art. 23 of the Civil Code Regardless of the protection provided for in other regulations, personal rights of a person, including the right to privacy, remain under the protection of civil law. The provision of Art. 24 of the Civil Code guarantees the person whose personal rights has been endangered with the right to request to refrain from acting violating the personal rights, and in the event of an already committed violation of the request, that the person who committed the infringement will complete the actions necessary to remove its effects. At the same time, pursuant to Art. 448 of the Civil Code, in the event of infringement of a personal interest, the court may award an appropriate amount to the person whose interest has been infringed as compensation for the harm suffered, or, upon his request, order an appropriate amount of money for the social purpose indicated by it, regardless of other measures needed to remove the effects of the infringement. Therefore, if, in the opinion of the complainant, there was a breach of her personal rights by Mr. K. B., she may pursue her claims in this respect by way of a civil action brought before the locally competent common court.

In this factual and legal state, the President of the Personal Data Protection Office resolved as at the beginning. 127 § 3 of the Code of Civil Procedure of the decision, the party has the right to submit 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, 00-193 Warsaw). However, due to the state of epidemic in force on the date of the decision, pursuant to Art. 15zzr paragraph. 1 point 1 of the Act of March 2, 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374), the running of this period currently it will not start; it will start to run on the day following the last day of the epidemic or immediately following any possible epidemic threat.

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.

2021-03-23