

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 05

March

2021

## DECISION

DKE.523.3.2021

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended, of 2021, item 54, as amended), in connection with joke. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) and art. 12 point 2, 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. 57 sec. 1 lit. a) and 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 of the EU L 119 of 04/05/2016, p. 1 and the Official Journal of the EU L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. IW represented by attorney-at-law. M. G. on irregularities in the processing of personal data by B. Sp. z o.o. sp.k. (previously: H. Sp. z o.o.) and by A. Sp. z o.o. President of the Personal Data Protection Office,

discontinues the proceedings.

## JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Mr. I. W., hereinafter referred to as: "Complainants" represented by attorney-at-law. M. G. on irregularities in the processing of personal data by B. Sp. z o.o. Sp. k., hereinafter referred to as: "B." (formerly: H. Spółka z o.o., hereinafter referred to as: "H.") and by A. Sp. z o.o., hereinafter referred to as: "A.".

In the content of the complaint, the complainant asked for the quotation:

"1. Determining the unlawfulness (art.54 of the Act on Public Procurement Law) of failure to provide the complainant with information enabling him to exercise his rights granted in the Act by not indicating by the above-mentioned entities:

- in which files the data controller and data processor process my Principal's personal data;

- to what extent the data controller and data processor process my Principal's personal data;
- how the data controller and data processor process the personal data of my Principal;
- since when the data controller and data processor process my Principal's personal data and to what extent
- in what source the data administrator and data processor obtained the data of my Principal and to what extent;
- how and to what recipients the data controller and data processors provide my Principal's personal data;

2. Examination of the legality of the processing of my principal's personal data by the above-mentioned entities by determining whether, in the facts of this case, an evident violation of the complainant's rights (including the right to privacy) by both the data controller and the processor (A. Sp. Z oo) does not nullify the grounds for legalizing the processing referred to in art. 23 sec. 1 point 5 of the AED;

3. Examination of the legality of the processing of my principal's personal data by the processor by determining whether, due to the loss of the purpose of processing and the lack of legitimacy of the processor to pursue a claim on behalf of the administrator to pursue a claim on behalf of the data administrator, data processing by the processor (A. Sp. Z oo) is entitled under Art. 23 sec. 1 point 5 u.o.d.o;

4. Examination of the legality of data processing by the above-mentioned entities in terms of the premise of adequacy of data processing referred to in art. 26 sec. 1 point 2 u.o.d.o. in relation to the purpose of processing and the possibility of its investigation only in court.

5. Issue of a decision ordering the removal of my principal's personal data from personal data files and all information carriers kept by the above-mentioned entities;

6. The exercise by the Inspector General for Personal Data Protection of the powers specified in art. 12, art. 17, 18 and art. 19 of the Act on the Protection of Personal Data by checking whether the above-mentioned entities process the personal data of debtors:

a) to the extent adequate to the pursued purpose in a situation where the processing of data is unnecessary to pursue a claim, rather than the data indicated in art. 126 § of the Code of Civil Procedure, in particular the telephone numbers of the debtor or his family members;

7. The exercise by the Inspector General for Personal Data Protection of the powers specified in art. 12, art. 17, 18 and art. 19 of the Act on the Protection of Personal Data by checking whether the above-mentioned entities process personal data of third

parties (family members, neighbors, friends, etc.) in order to pursue claims against debtors, and therefore completely disregarding the legal basis for data processing; "

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office (hereinafter: "the President of the Personal Data Protection Office") determined the following.

1. H. (now B.) obtained the complainant's personal data on the basis of a debt sale agreement concluded on [...] October 2016 between Bank B. Spółka Akcyjna, hereinafter referred to as B., and H. under the loan agreement No. [...] of [...] September 2013, ie pursuant to 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, and of 2018, item 138), hereinafter: "the 1997 Act" in connection with Art. . 509 of the Civil Code Act (Journal of Laws of 2020, item 1740). The personal data of the Complainant B. obtained in the scope specified in the contract for the sale of receivables, i.e. name and surname, address of residence, series and number of ID card, PESEL number, NIP number, REGON number, contact telephone number, bank account number (proof: letter of [...] February 2018).
2. B. processed the complainant's personal data pursuant to art. 23 sec. 1 point 5 of the 1997 Act in connection with debt recovery. Pursuant to Art. 23 sec. 4 pts 2 of the Act of 1997, the legitimate purpose of processing the complainant's personal data was to pursue claims in connection with B.'s business activity.
3. According to B.'s explanations of [...] February 2018, the Complainant did not apply for the fulfillment of the information obligation pursuant to Art. 33 of the 1997 Act.
4. By letter of [...] February 2018, A. informed that she had obtained the Complainant's personal data on the basis of a mandate contract for the recovery of receivables of [...] October 2016 between H. (now B.) and A., i.e. contracts for the entrustment of personal data in accordance with art. 31 of the 1997 Act. A. on the basis of the aforementioned contract, she processed the complainant's personal data for the purpose of pursuing claims due to B.
5. According to A.'s explanations of [...] February 2018, the Complainant requested that the information obligation under Art. 33 by the 1997 Act, but A. initially failed to comply with this request "by oversight". She fulfilled the information obligation towards the Complainant in a letter to the Complainant's attorney dated [...] February 2018.
6. In a letter of [...] October 2020, A. stated that for more than two years she had not been conducting debt collection proceedings against the Complainant and was not currently processing his personal data.
7. B. in a letter of [...] October 2020, stated that it had ceased to process the Complainant's personal data due to the limitation

of the claim underlying the claim, and had not been carrying out any debt collection activities against the Complainant for over two years and had not commissioned such activities to other companies.

In these facts, 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 2019, item 1781), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the 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, 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 of 2021, item 54), hereinafter referred to as "the Code of Administrative Procedure". 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 (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

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 1997 (with regard to the provisions governing the administrative procedure) and on the basis of Regulation 2016/679 (as regards the legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed 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 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 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., EI / 2012).

In the judgment of May 7, 2008 in the case file ref. Act I OSK 761/07 The Supreme Administrative Court 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 lawful manner" .

The decisive factor for the resolution of this case is the fact that the complainant's personal data are currently not processed by B. and A. The evidence gathered in the case shows that both companies have not been conducting any debt collection activities against the complainant for over two years. The claim being the basis of the claim is time-barred and B. has ceased to pursue it. Due to the cessation of the processing of the complainant's personal data by both companies, the subject of these administrative proceedings ceased to exist.

In this situation, these proceedings are subject to discontinuation pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended, of 2021, item 54, as amended), hereinafter referred to as the Code of Administrative Procedure, due to its redundancy. In accordance with the above-mentioned a provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, respectively, in whole or in part. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed groundless, the body conducting the procedure will obligatorily discontinue it. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative Proceedings means that there is no element of the material legal relationship, and therefore it is not possible to issue a decision settling the matter by deciding on its substance (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Comment" 7th edition Wydawnictwo CH Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 (III SA / Kr 762/2007): "The procedure becomes redundant when one of the elements of the substantive legal relationship is missing, which means that the case cannot be settled by deciding on the substance " .

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter of substance, and continuing the proceedings in such a case would be defective, significantly affecting the result of the case.

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 submit an application for

reconsideration of the case within 14 days from the date of delivery of the decision 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). 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.

2021-07-15