

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 17

June

2019

## DECISION

ZSZZS.440.50.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149) and art. 6 sec. 1 lit. c, art. 9 sec. 2 lit. h and i, art. 58 sec. 2 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 (Official Journal of the European Union , L 119, May 4, 2016), after conducting the administrative procedure regarding the complaint regarding the disclosure of personal data of Mrs. MP, Mr. MP and their minor children in terms of names, surnames, address of residence, dates of birth, PESEL numbers and information on the health condition of children by the Outpatient Clinic for the State County Sanitary Inspector based in S., President of the Office for Personal Data Protection refuses to accept the request.

### Justification

The Office for Personal Data Protection received a complaint from Ms M.P., Mr M.P. and their minor children, hereinafter: the Complainant, as regards first names, surnames, address of residence, dates of birth, PESEL numbers and information on the children's health by P. Sp. z o.o., hereinafter: Clinic, for the County State Sanitary Inspector with headquarters in S., hereinafter: PPIS.

In the content of the complaint, the complainants indicated that the clinic provided PPIS with their personal data without consent and legal basis, and demanded that the processing of personal data be adjusted to the provisions on the protection of personal data and that "the processing of the indicated data should be prohibited (...), including the prohibition of transferring data to others institutions, without legal grounds ".

In the course of the administrative proceedings, the President of the Personal Data Protection Office established the following facts.

The applicant and her husband, Mr M.P., as persons taking care of their minor children, did not oblige them to vaccinate them. Due to the failure by the Complainants to fulfill the obligation to vaccinate their minor children, the Clinic provided their personal data in the scope of their name, surname, PESEL number, address of residence and information about unfinished vaccinations to the County State Sanitary Inspector in S. in order to implement the obligation imposed on them legal obligation. After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

In relation to the so-called "Ordinary data" it should be indicated that their processing is governed by Art. 6 sec. 1 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 (Official Journal of the European Union , L 119, May 4, 2016), hereinafter: GDPR. Pursuant to this provision, the processing of personal data is allowed only if one of the conditions set out in this provision is met. The catalog of premises listed in Art. 6 sec. 1 GDPR is closed. However, the processing of the so-called "Sensitive data" is regulated in Art. 9 of the GDPR, which enumerates the situations in which such data may be processed. Pursuant to Art. 9 GDPR, the processing of sensitive data is only allowed if one of the conditions of Art. 9 sec. 2 GDPR. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are, in principle, equal, and therefore the fulfillment of at least one of them determines the lawful processing of personal data. It should also be pointed out that pursuant to Art. 6 sec. 1 GDPR, the processing of "ordinary data" may take place regardless of the consent of the data subject (Article 6 (1) (a) of the GDPR) and it is also allowed, inter alia, when it is necessary to fulfill the legal obligation incumbent on the controller ( Article 6 (1) (c) of the GDPR). On the other hand, "specific data" may be processed, inter alia, for the purposes of preventive health (...) on the basis of EU law or the law of a Member State, subject to paragraph 3 (h) and when processing is necessary for the public interest in the field of public health on the basis of European Union or Member State law (point i).

When referring to the disclosure of the Complainants' personal data by the Clinic for PPIS, the following should be indicated. Pursuant to Art. 5 sec. 1 point 1 point b of the Act of December 5, 2008 on promoting and combating infections and infectious diseases in humans (Journal of Laws 2008 No. 234 item 1570), hereinafter: of this Act to undergo preventive vaccinations. In the case of a person without full legal capacity, the responsibility for the fulfillment of this obligation is borne by the person who exercises legal custody or actual care of a minor or helpless person, in accordance with art. 3 sec. 1 point 1 of the Act of

November 6, 2008 on Patient Rights and Patient's Rights Ombudsman (Journal of Laws of 2017, item 1318, as amended).

Moreover, Art. 5 sec. 1 point 4 of the Act on obliges persons staying on the territory of the Republic of Poland to provide personal data and information, inter alia, to the bodies of the State Sanitary Inspection, which are necessary for

epidemiological supervision over infections and infectious diseases, prevention and combating infections and infectious

diseases, as well as information necessary to fulfill the obligations set out in Art. 5 sec. 1 point 1-3 of the Act on

Pursuant to Art. 17 sec. 8 z.z. persons carrying out preventive vaccinations keep medical records on compulsory vaccinations,

keep immunization cards, make entries confirming vaccination, draw up reports on the vaccination status and prepare reports

on the vaccination status of persons covered by preventive health care, which are forwarded to the relevant State County

Sanitary Inspector. Article 17 (1) 10 z.z. indicates that the report template is specified in the Regulation of the Minister of

Health of 18 August 2011 on compulsory preventive vaccinations (i.e. Journal of Laws of 2018, item 753), hereinafter referred

to as: *rosz*, which requires a list of people who have not avoided from preventive vaccinations (Annex 4, second section *rosz*).

As it has been shown, in accordance with the applicable law, the Clinic is obliged to prepare a report on the preventive

vaccinations carried out and to prepare a list of names of people who avoid immunization, in order to enable the State Sanitary

Inspection to supervise the fulfillment of this obligation and its effective execution. It should be pointed out that compliance with

the statutory obligation to undergo protective vaccinations against infectious diseases resulting from Art. 5 sec. 1 point 1 point

b of the *Ustawa*, as well as the provision of information on its implementation, was secured by administrative coercion (also:

Provincial Administrative Court in Kielce, judgment of February 21, 2013, issued in the case No. II SA / Ke 7/13) . According to

Art. 3 § 1 in connection with *art. 2 § 1 point 10* of the Act of 17 June 1966 on enforcement proceedings in administration

(Journal of Laws of 2014, item 1619 as amended), hereinafter: *u.p.e.a.* or the Act on Enforcement Proceedings, administrative

enforcement shall apply to non-pecuniary obligations remaining within the competence of government administration and local

government bodies or submitted for administrative enforcement on the basis of a special provision. Within the meaning of Art.

1a point 13 *u.p.e.a.* the creditor is the entity entitled to demand the performance of the obligation or its security in

administrative enforcement or security proceedings (here: *PPIS*), while in accordance with Art. 5 § 1 point 2 *u.p.e.a.* entitled to

request the performance by way of administrative enforcement of the obligation specified in *art. 2 § 1 point 10* of the Act on

there is a body or institution directly interested in the performance of the obligated obligation or appointed to supervise the

performance of the obligation (see also the judgment of the Supreme Administrative Court of June 12, 2014, issued in the case

No. II OSK 1312/13; judgment of the Provincial Administrative Court) in Bydgoszcz of June 9, 2015 issued in the case with reference number II SA / Bd 423/15). Therefore, it should be considered that the report drawn up pursuant to Art. 17 sec. 8 point 2 of the Act on should contain the data necessary for the appropriate branch of the State Sanitary Inspection to send a reminder to comply with the vaccination obligation and to take further enforcement actions in the event of failure to fulfill the obligation. It should be emphasized that the data obtained by the PPIS and made available to it must also be sufficient to effectively enforce the vaccination obligation, under which the creditor (here: PPIS) draws up an enforcement title. The scope of these data is governed by Art. 27 of the Act on Enforcement Proceedings. Pursuant to Art. 27 § 1 point 2 and 3 of the Act on enforcement, the writ of execution should include the name, surname, address, PESEL number of the person liable and the content of the obligation to be enforced.

In connection with the above, it should be stated that the Complainants' personal data in the field of first name, surname, PESEL number, address of residence were made available by the Clinic for the PPIS pursuant to art. 6 sec. 1 lit. c GDPR, and the data of their minor children in the field of information on vaccinations not performed pursuant to art. 9 sec. 2 lit. h and GDPR, which in both cases should be again considered adequate and expedient in the light of the supervisory obligation performed by PPIS.

Referring to the above-mentioned requests of the Complainants, it should be pointed out that the disclosure of data on the health status of the Complainants' child by the Clinic to the PPIS was based on Art. 9 sec. 2 letter h and i GDPR in terms of information on health, and in terms of other data in art. 6 sec. 1 lit. c of the GDPR, therefore, in this regard, granting the complainants' requests should be considered unfounded. On the other hand, in connection with the request to carry out an inspection in the Outpatient Clinic, it should be indicated that comprehensive inspection activities regarding the processing and protection of data by a specific data administrator may therefore be taken by the President ex officio, after receiving information about the illegal activities of the entity and after making a preliminary assessment of the legitimacy of the charges against him, but the decision to carry out these activities is made by the authority on its own based on a reasonable suspicion of violating the provisions of the GDPR. In the present case, it should be convicted that the circumstances questioned by the applicant resulted from the deliberate actions of the Outpatient Clinic, in accordance with the applicable regulations, therefore the request for inspection should be considered groundless.

The administrative procedure conducted by the President of the Personal Data Protection Office serves to control the

compliance of data processing with the provisions on the protection of personal data and is aimed at issuing an administrative decision pursuant to Art. 58 of the GDPR, based on which the supervisory authority may restore legal status. In the case at hand, it was found that the disclosure of the Complainants' personal data by the Clinic for PPIS and their processing by this authority did not constitute a breach of the provisions on the protection of personal data, therefore the application of remedial rights under Art. 58 sec. 2 GDPR is unfounded.

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

The decision is final. Based on Article. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) and in connection with joke. 13 § 2, art. 53 § 1 and article. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2017, item 1369, as amended), the party has the right to lodge a complaint against this decision with the Provincial Administrative Court in Warsaw, in within 30 days from the date of delivery of this decision, via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). The entry 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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