

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

of August

2019

DECISION

ZSZZS.440.786.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (i.e. Journal of Laws of 2018, item 2096 as amended) and art. 9 sec. 2 lit. g and 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 administrative proceedings regarding the complaint of Mr. DW about irregularities in the processing of his personal data by the Prison in W., consisting in providing the Administrative Proceedings Department of the Provincial Police Headquarters in K. with his personal data in the scope of information on being on sick leave, and on the basis of issuing this certificate, the President of the Office for Personal Data Protection refuses to accept the request.

Justification

The Personal Data Protection Office received a complaint from Mr DW, hereinafter referred to as the Complainant, about irregularities in the processing of his personal data by the Correctional Facility in W., hereinafter referred to as the Correctional Facility, consisting in providing the Administrative Proceedings Department of the Provincial Police Headquarters in K. the scope of information about being on sick leave, and the basis for issuing this certificate.

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

The applicant is an officer of the Prison Service, serving in a prison.

Due to the applicant's long-term sick leave issued by a specialist in the field of psychiatry, the Prison, in a letter of [...] July 2018, informed the Provincial Police Headquarters, Department of Administrative Proceedings of this fact. The Detention Center pointed out that the above was due to the information it had that the complainant ran a business in which he conducts

training in the field of sport shooting and other specialist training.

After reviewing all the evidence gathered in the case, the President of the Personal Data Protection Office (hereinafter referred to as the President of the Personal Data Protection Office) considered the following.

In the content of the complaint, the complainant questions the legitimacy of disclosure by the Prison of a specific category of personal data concerning him - i.e. concerning health. Such was the nature of the information about the applicant's long-term sick leave issued by a psychiatrist. Pursuant to Art. 9 sec. 1 GDPR - as a rule, the processing of this type of personal data is prohibited, however, par. 2 above the provision lists the conditions the fulfillment of which excludes this principle. Among the reasons justifying the processing of special categories of data, including health, the GDPR lists, inter alia, the data subject's explicit consent to the processing of such personal data for one or more specific purposes, unless EU law or the law of a Member State provide that the person whose data relate to, may not revoke the prohibition referred to in paragraph 1 (a), as well as the necessity of processing for reasons of important public interest, on the basis of EU law or the law of a Member State, which are proportionate to the aim pursued, do not infringe the essence of the right to data protection and provide for appropriate and specific measures to protect the rights fundamental and interests of the data subject (point g).

In the submitted explanations, the Detention Center pointed out that the complainant runs a business in which he conducts training in the field of sport shooting and other specialist training. Art. 24 sec. 1 in conjunction joke. 2 clause 2 point 6 of the Act of 9 April 2010 on the Prison Service (i.e. Journal of Laws of 2018, item 1542), hereinafter referred to as the Prison Service Act. Pursuant to Art. 2 clause 1 of the Act on the Prison Service, it carries out, on the terms specified in the Act of 6 June 1997 - Executive Penal Code (Journal of Laws of 2018, items 652 and 1010), tasks in the scope of performing pre-trial detention, imprisonment and coercion resulting in deprivation of liberty. Joke. 2 clause 2 point 6 of the Act on the Prison Service, it follows that its basic tasks include ensuring order and security in prisons and detention centers. In order to perform this task, the Prison Service is entitled to process personal data, what is more, it can do it without the knowledge and consent of the data subjects - art. 24 sec. 3 above Act on the Prison Service. The same provision in para. 4 point 5 lists among the data processed in this way by the Prison Service - data on officers and employees as well as other persons serving or employed in public authorities, performing activities with or towards persons referred to in points 1-3 or whose data personal data is contained in the documents submitted to the Prison Service - to the extent necessary to perform the duties and tasks listed in points 1-3. In the opinion of the President of the Personal Data Protection Office, art. 24 sec. 1 in conjunction joke. 2 clause 2 point 6 of the

above-mentioned of the Act on the Prison Service, it cannot, however, constitute the basis for the transfer of the complainant's personal data in the scope questioned by him to the Provincial Police Headquarters. These provisions do not indicate that the data regarding the information on the applicant's health status were included in the scope of data necessary for the performance of duties and tasks by the Prison Service.

The issue of conducting the procedure for issuing a firearms permit or withdrawing this permit was specified in detail in the provisions of the Act of May 21, 1999 on weapons and ammunition (Journal of Laws of 2019, item 284). The content of art. 15 sec. 1 indicates that firearms licenses are not issued to people with mental disorders, referred to in the Act of August 19, 1994 on the protection of mental health (Journal of Laws of 2018, item 1878), or with significantly reduced fitness psychophysical; or people with significant disorders of psychological functioning. The above circumstances, in accordance with art. 18 sec. 1 above Acts are also the basis for the revocation of a firearms license. The provisions of the above-mentioned act thus constitute a wide range of rights on the part of the Police authority conducting administrative proceedings regarding the issuance of a firearms permit or its withdrawal to obtain information about the person with whom the proceedings are conducted. Determining a person's mental health is a key issue in testing a person's fitness to own a firearm. The provisions of the above-mentioned However, the Acts do not regulate who and in what circumstances is entitled to report to the competent authorities that they have information about the existence of grounds for withdrawing a firearms permit from a specific person. Therefore, there is no legal provision that would directly allow the transfer of personal data of a special category to the authority issuing a firearms license, i.e. concerning the mental health of a person holding a firearms license.

The Director of the Prison, acting for the sake of security - in the opinion of this authority - not only within the premises of the penitentiary unit, but also outside it, bearing in mind that the officer, in this case the applicant, is on duty with the assigned duties depending on the station and assigned tasks. to the police station with the use of a firearm, and moreover, bearing in mind that the Complainant conducts business activity under which he conducts training in the field of sport shooting, he did the right thing. Being on a long-term sick leave issued by a psychiatrist raises doubts as to whether the officer still meets the requirements set out in Art. 15 sec. 1 of the Act of May 21, 1999 on weapons and ammunition (i.e. Journal of Laws 2019, item 284), and thus whether the possession of the weapon does not pose a threat to the health and life of one's own and other people. Considering the content of Art. 15 sec. 1 and art. 18 sec. 1 above of the Act on Weapons and Ammunition, in the opinion of the President of the Personal Data Protection Office (UODO), the transfer of sensitive data regarding the

Complainant's sick leave was based on Art. 9 sec. 2 lit. g GDPR, because it was aimed at an important public interest and was based on the provisions of the above-mentioned the Act on weapons and ammunition. The director of the Prison, aware of the potential dangers, signaled to the Provincial Police Headquarters in K. as the authority competent to examine the issues justifying the withdrawal of a firearms license, including the existence of circumstances questioning the applicant's mental health, which was a condition of key importance for this right.

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 sec. 2 GDPR. The President of the Personal Data Protection Office found no irregularities in the operation of the Correctional Facility, therefore there are no grounds for issuing a decision restoring the legal status.

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

Caution: 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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