

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 13

September

2019

## DECISION

ZKE.440.55.2019

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. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), art. 12 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922), Art. 2 clause 2 lit. c 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 EU L 119 of 04/05/2016, p. 1 and OJ L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding a complaint from Mr. JP regarding the processing of his personal data by Mr. KJ, - President Personal Data Protection Office, refuses to accept the request.

## JUSTIFICATION

The President of the Personal Data Protection Office (previously: the Inspector General for Personal Data Protection) received a complaint from Mr. J. P., hereinafter referred to as the Complainant, regarding the processing of his personal data by Mr. K. J.

The complainant alleged that Mr K. J. was processing his personal data unlawfully, including sending correspondence to his address.

The complainant requested that Mr K. J. remedy the deficiencies in the processing of his personal data by: a) permanently deleting the complainant's personal data, due to the lack of an appropriate declaration of consent to the processing of personal data, and their unauthorized acquisition; b) establishing, in the course of the investigation, the entity from which K. J. obtained information about the Complainant's personal data, in particular with regard to his address, and moreover; c) providing the Complainant with information on the findings made by the supervisory authority.

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) Both the Complainant and Mr. K. J. are partners of the company P. Sp. z o.o.

2) The complainant, at his home address, received correspondence addressed to him by name, the sender of which was Mr K. J. The said correspondence, sent at the office of the Polish postal operator on [...] September 2016, was addressed to the partners of the company P. Sp. z o.o., one of which is the Complainant (a copy of the letter in the case file). In the letter in question, Mr. K. J. referred to, in his opinion, bad financial condition of the company and asked the partners to take steps to improve the situation.

3) In the explanations sent to the President of the Personal Data Protection Office of [...] November 2016, Mr. K. J. indicated that in connection with the planned meeting of the shareholders, he had decided by letter to inform them about his concerns about the deteriorating financial situation of the company. The letter sent to Mr. J. P. was a private letter, containing only his position on a matter which, in his opinion, should be of interest to all shareholders who invested their own money in the company's operations. At the same time, Mr. K. J. explained that he had prepared the said letter solely for personal purposes, and the complainant did not request him to remove his personal data and to stop sending private correspondence to his address.

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 of 2018, item 1000, as amended), 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 of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended), in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), 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 (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 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 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).

Bearing in mind the above, the President of the Personal Data Protection Office (UODO), on the basis of the evidence collected in this case, assessed the processing of the Complainant's personal data in the context of the provisions of Regulation 2016/679.

In the opinion of the President of the Personal Data Protection Office, these provisions do not provide a basis in the present case to conclude that the Complainant may benefit from the protection provided for therein. According to the content of Art. 2 clause 2 lit. c) Regulation 2016/679, it does not apply, inter alia, when personal data is processed by a natural person as part of a purely personal or household activity. At the same time, as it results from the development of the abovementioned standard, contained in recital 18 of the preamble to Regulation 2016/679, "purely personal or household activity" should be understood as activity that is unrelated to the professional or commercial activity of a natural person. Thus, personal or domestic activities may include, inter alia, on correspondence and storage of addresses, maintaining social ties and Internet activities undertaken as part of such activities. The cited definition leads to the conclusion that the processing of data for personal use (e.g. in personal notebooks, private computers or other private devices enabling automated data processing), not related to the conducted business activity or activities that could bring any financial benefits, is not covered by the regime of current legal norms in the field of personal data protection.

As a side note, it should be noted that a similar solution functioned in the previous legal status, under the provisions of the Act of August 29, 1997 on the protection of personal data. Pursuant to Art. 3 sec. 2 point 2 of the cited legal act, the provisions contained therein were applicable to natural persons and legal persons as well as organizational units that are not legal persons, if they processed personal data in connection with commercial or professional activities or for the implementation of statutory objectives. At the same time, however, Art. 3a sec. 1 point 1 introduced an exemption according to which the provisions of the Act did not apply to natural persons who processed data solely for personal and domestic purposes.

Shifting the above considerations into the present case, it should be stated that the collected evidence did not give rise to the assumption that the processing of the complainant's personal data by Mr. K. J. was carried out for purposes other than personal. In the opinion of the President of the Personal Data Protection Office, the processing of the Complainant's personal data was not related to the commercial, professional or statutory activity of Mr. K. J. As it was established in the course of the proceedings, the above-mentioned - taking into account the planned date of the meeting of the shareholders of P. Sp. z o.o. and the company's deteriorating financial situation - he decided to inform the shareholders about his concerns about this fact.

At the same time, as it is clear from the explanations of Mr. K. J., the letter in which he questioned the management of the company, addressed to the Complainant and other shareholders, was prepared solely for personal purposes, which cannot be disagreed with. The content of the said correspondence does not indicate that the nature of the activity consisting in the preparation of the letter and its shipment was different than purely personal, because in the letter Mr K. J. only revealed his fears and privately formulated conclusions regarding the condition of the company of which he is a partner. Contrary to the complainant's claims, the letter addressed to him does not contain any elements indicating the possibility of persuading him to sell shares in P. Sp. z o.o., which leads to the conclusion that Mr. K. J. would not obtain any financial benefits in connection with the processing of the Complainant's personal data. The author of the disputed correspondence has never sat on the company's governing bodies, which, in the opinion of the President of the Personal Data Protection Office, excludes the possibility of classifying his actions as activities of a professional nature. Moreover, in the opinion of the President of the Personal Data Protection Office, there is no content in the letter that would prove that Mr. K. J. acted on behalf of and for the benefit of another entity.

In the opinion of the President of the Personal Data Protection Office, it is not convincingly apparent from the submission of the Complainant and the evidence submitted in support of it that the actions of Mr. K. J., in connection with the circumstances of

the processing of the Complainant's personal data by him, were actions of a non-personal nature. For this reason, the processing of the Complainant's personal data described in the complaint may not be protected under the provisions of Regulation 2016/679. The inability to apply the provisions on the protection of personal data in this specific, individual case determines the necessity to issue a decision refusing to grant the Complainant's request. At the same time, due to the lack of legal grounds for further proceedings, the President of the Personal Data Protection Office refrained from examining the method of obtaining the Complainant's personal data by Mr. K. J. Conducting additional evidence in this respect would not affect the manner in which the case was resolved, causing only an unnecessary extension of the administrative proceedings. 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 his claims is the Civil Code of 23 April 1964 (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 interest has been threatened with the right to request that the infringement of the request refrain from acting, and in the event of an already committed violation of the request, that the person who committed the infringement should complete the actions necessary to remove its effects, in particular to submit a declaration of appropriate content and in an appropriate form. 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.

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 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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