

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

of August

2019

DECISION

ZSOŚS.440.60.2019

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 5 sec. 1 point 6, art. 12 in connection with Art. 13 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2018, item 125), after conducting administrative proceedings regarding the complaint of Ms RA (residing [...]) irregularities in the process of processing her personal data by the District Prosecutor's Office in G. and the County Police Commander in G. in the manner of delivering the summons for a psychiatric examination,

I refuse to accept the application

Justification

On [...] February 2019, the Personal Data Protection Office received a complaint from Ms RA (hereinafter referred to as: "the complainant") about irregularities in the processing of her personal data by the District Prosecutor's Office in G. and the District Police Commander in G. when an officer of the Police Station in P. left at the door of her house a photocopy of the summons for a psychiatric examination in a way that allows unauthorized persons to read the summons. This summons was drawn up by the District Prosecutor's Office in G.

In the content of the complaint, the complainant indicated that the above-mentioned the photocopy did not have an envelope, so it could be accessed by unauthorized persons. At the same time, she stated that she did not know about persons who might still be in possession of this document or could read the content of the summons. In connection with the above, the complainant asked the President of the Office for Personal Data Protection to take actions aimed at abandoning such actions and removing their effects and observing her rights.

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

By letters of [...] April 2019, the President of the Personal Data Protection Office informed the complainant and the District Prosecutor in G. about the initiation of explanatory proceedings and asked the Prosecutor to comment on the content of the complaint and submit written explanations. A letter with the same content was also sent to the County Police Commander in G. (letter of [...] June 2019 in the case files). The Office for Personal Data Protection on [...] May 2019 received an e-mail from the District Prosecutor (sent on that day also at the post office) - [...], in which he explained that the District Prosecutor's Office in a letter from [...] February 2019 commissioned, pursuant to Art. 131 § 1 of the Code of Criminal Procedure, delivery of a summons for a psychiatric examination to the complainant through the organizational unit of the Poviát Police Headquarters in G., i.e. the Police Station in P., in connection with the pending preparatory proceedings. The service was to be delivered with a return acknowledgment of receipt and the document confirming the receipt of the summons should be forwarded to the District Prosecutor's Office. Moreover, it pointed out that the District Prosecutor's Office, as a result of the information obtained from the President of the Office, initiated explanatory proceedings and asked the District Police Commander in G. to establish and undertake explanatory actions in the scope of the manner of delivering the summons to the applicant. In turn, [...] June 2019, a letter was received from the Poviát Police Commander in G. ([...]), in which he explained that he had instructed the Disciplinary Spokesman to initiate explanatory activities regarding the violation of regulations when delivering the parcel by a Police officer. As a consequence, it was found that the Police officer had improperly performed his activities of leaving correspondence at the front door of the applicant's house, as the law did not provide for such a form of service of letters to the parties to the proceedings. In the course of the above-mentioned of the proceedings, it was established that an officer of the Police Station in P., due to the applicant's absence from her place of residence, had left a photocopy of the call for examination at the front door of her house, which was folded in four parts in order to prevent unauthorized access to its contents. Moreover, taking into account the location of the complainant's real estate at a distance from the main communication routes and other buildings and the fact that the complainant lives alone, the Commandant decided that it should not be considered that the contents of the said correspondence could be made available to third parties. He also indicated that the Disciplinary Commissioner did not obtain any information that would indicate that the letter had been copied and used by unauthorized persons. The Commander also emphasized that the Police officer personally controlled the correspondence left in the door of the applicant's apartment by driving up to the gate to her property. Due to the recognition that the manner of delivery of the said correspondence was incorrect, the Commander ordered the heads of organizational units of the Poviát Police Headquarters in P. and S. to

re-acquaint the subordinate police officers with the applicable provisions contained in the Code of Criminal Procedure - Chapter 15 "Service", the Code of Administrative Procedure - Chapter 8 "Deliveries" and the provisions on the protection of personal data. The officer who improperly performed the act of delivering the letter was obliged to comply with the provisions on the protection of personal data and with regard to delivering correspondence to the parties to the proceedings.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

The evidence collected in the present case shows that the District Prosecutor's Office in G. ordered, pursuant to Art. 131 § 1 of the Act of 6 June 1997 Code of Criminal Procedure (Journal of Laws of 2018, item 1987, as amended), hereinafter referred to as: "of the Code of Criminal Procedure, delivery of a summons to the complainant for a psychiatric examination in connection with the proceedings pending against her preparatory. On [...] February 2019, an officer of the Police Station in P. tried to deliver the above-mentioned the applicant's summons, however, in view of her absence at that time at the place of residence, decided to leave a photocopy of the correspondence at the front door of her house. The Poviatic Police Commander in G. noted that the officer serving the above-mentioned the summons took steps to protect the personal data contained therein against unauthorized access, consisting in submitting a photocopy of the letter in four parts and personally controlling the correspondence left at the door of the complainant's apartment by approaching the gate to her property.

The right to the protection of personal data, as one of the elements of the right to the protection of a person's privacy, has its source in the provisions of the Act of April 2, 1997, the Constitution of the Republic of Poland. According to the Basic Law, everyone has the right, inter alia, to the legal protection of private and family life, honor and good name (Article 47 of the Constitution), no one may be obliged, other than under the Act, to disclose information about him (Article 51 (1) of the Constitution).

The Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime, hereinafter referred to as: "the Act of December 14, 2018: rules and conditions for the protection of personal data processed by competent authorities for the purpose of identifying, preventing, detecting and combating prohibited acts, including threats to public safety and order, as well as the execution of pre-trial detention, penalties, order penalties and coercive measures resulting in deprivation of liberty (art. 1 item 1 point 1).

The admissibility of processing personal data depends on the fulfillment by the data controller of the conditions legalizing the processing of personal data. In the present case, it is necessary to indicate the premise of Art. 13 sec. 1 of the Act of

December 14, 2018, according to which the competent authorities process personal data only to the extent necessary to exercise the right or fulfill the obligation resulting from the law.

Bearing in mind the above, it should be noted that the Police, apart from operational and reconnaissance, investigative and administrative activities, performs, pursuant to Art. 14 of the Act of April 6, 1990 on the Police (Journal of Laws of 2019, item 161, as amended) upon the order of the court, the public prosecutor, the scope of which results from separate statutes. An example of this type of regulation is, inter alia, art. 15 § 1 of the Code of Criminal Procedure, containing a general norm according to which the Police, in the scope of criminal proceedings, carry out orders, inter alia the prosecutor. When referring to the method of delivering letters intended for participants in the proceedings, it is necessary to point to the regulations specified in section IV, chapter 15 of the Code of Criminal Procedure, detailed in the Regulation of the Minister of Justice of 10 January 2017 on the detailed rules and procedure for serving letters from procedural authorities in criminal proceedings (Journal of Laws of 2018, item 553). The provisions of the above-mentioned chapter 15 of the Code of Criminal Procedure establish various methods of delivering letters intended for participants in the proceedings, however, none of them constitutes the basis for delivering letters by leaving them at the door of the apartments of the persons to whom they are addressed. There are also no such regulations in the above-mentioned regulation. This act stipulates in § 10 that a Police officer, when delivering a letter to a procedural authority, is obliged to perform activities related to obtaining a receipt for the letter from the addressee, informing the addressee about the place of leaving the letter and the date of its receipt, and returning the letter to the sending authority.

In the present case, the content of Art. 137 of the Code of Criminal Procedure, which provides that in urgent cases, persons may be summoned or notified by phone or otherwise, as appropriate, leaving a copy of the message sent with the signature of the sender in the files. According to the doctrine, the term "other way" should be understood as any other method of fast communication, eg fax, telegraph, e-mail (W. Grzeszczyk, Code of Criminal Procedure. Commentary, 5th edition, Wydawnictwo Prawnicze LexisNexis, Warsaw 2007, p. 728). Moreover, the interpretation of Art. 137 of the Code of Criminal Procedure should also take into account other legal norms, in particular Art. 128 § 2 of the CCP, according to which all letters intended for participants in the proceedings are delivered in such a way that their content is not made available to unauthorized persons.

Considering the above, it should be stated that the order to deliver the correspondence to the applicant by the District

Prosecutor's Office in G. is based on Art. 131 of the Code of Criminal Procedure. However, the method of service consisting in leaving the letter addressed to the applicant at the door of the house was carried out by an officer of the Police Station in P. without any legal basis. As a consequence, this is incorrect both in terms of the provisions regulating criminal proceedings and the Act of December 14, 2018 regarding the improper performance of the obligation to protect data against disclosure to unauthorized persons. Therefore, there was a violation of the provision of Art. 39 of the Act of December 14, 2018.

At this point it should be emphasized that the Poviát Police Commander in G. is obliged to ensure the proper performance of duties and compliance with the provisions by the employees of the Headquarters, whose organizational structure includes, inter alia, Police Station in P. (§ 7 point 5 of the Organizational Regulations of the County Headquarters in G. of [...] May 2016, as amended).

However, due to the fact that the delivery of correspondence without the form required by law and in a manner violating the provisions on the protection of personal data was incidental and the fact that measures have already been taken to eliminate such deficiencies, it is pointless to issue a decision ordering the restoration of compliance with the law. Moreover, the President of the Office is not authorized to issue an order regarding possible unauthorized processing of the complainant's personal data in the future. It should be emphasized that an administrative decision is a specific and individual act and always concerns a strictly defined, established and current state of affairs at the time of the ruling. The President of the Office is not authorized to issue a decision with regard to future situations.

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

The decision is final. Based on Article 9 sec. 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), in connection with art. 15 of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court, within 30 days from the date of its delivery side. The complaint is lodged through the President of the Personal Data Protection Office. 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.

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