THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 13

of December

2018

DECISION

ZSOŚS.440.126.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096) and art. 12 point 2, art. 22 and art. art. 32 sec. 1 point 1-5a of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922 as amended), hereinafter referred to as "u.o.d.o.", in connection with art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended), after administrative proceedings regarding the complaint of Mr. M. S., residing in in G. on the fact that the Police Commander in Chief did not fulfill his information obligation

I refuse to accept the application

Justification

On [...] June 2015, a complaint from Mr. M. S., residing in in G. on the fact that the Police Commander in Chief did not fulfill his information obligation. In the content of the complaint, the complainant indicated that [...] in March 2015, he applied to the Police Headquarters to grant him access, pursuant to Art. 32 u.o.d.o. all data related to his person in the National Police Information System. In a letter of [...] March 2015, the Police Commander in Chief refused ([...]) to grant the above-mentioned information, as the legal basis indicating "the provision of art. 20 paragraph 2a of the Police Act, which is a lex specialis in relation to Art. 32 and 33 of the Act on the Protection of Personal Data "and indicating that" The Police are not obliged to inform the person whose personal data they process about the fact of processing such data as well as about the scope of processing or sharing personal data ".

In connection with the above, [...] on December 2015, the Inspector General for Personal Data Protection sent a request to the Police Commander in Chief to provide explanations. In reply, the Police Commander in Chief, in a letter [...] of [...] January 2016, referred to the applicant's letter, reiterating Art. 20 paragraph 2a of the Police Act as the legal basis for its actions, and also pointing out that “it should be added that pursuant to Art. 51 sec. 5 of the Constitution of the Republic of Poland, the rules

and procedure for collecting and sharing information will be specified by the Act (...) The Constitution of the Republic of Poland distinguishes between the right to access data files, the limitations of which may be specified by the Act (Article 51 (3) of the Constitution of the Republic of Poland) from the right to request deletion of information untrue, incomplete or collected in a manner inconsistent with the law (Article 51 (4) of the Polish Constitution). At the same time, it should be added that the right to access data files is not the same as the right to access information, and the right to request deletion of data is not the same as the right to disclose data or the right to access data sets ".

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

The above-mentioned Act on the Protection of Personal Data of August 29, 1997 provides legal grounds for applying state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. The issuing of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing.

In the present case, one should in particular take into account Art. 32 sec. 1 point 1-5a of the Personal Data Protection Act, according to which each person has the right to control the processing of data concerning him, contained in data files, and in particular the right to: 1) obtain comprehensive information whether such a set exists, and to determine the data administrator, his address seat and full name, and if the data controller is a natural person - his place of residence and full name; 2) obtain information on the purpose, scope and method of processing the data contained in such a set; 3) obtain information from when the data concerning it are processed in the filing system, and provide the content of these data in a commonly understood form; 4) obtain information about the source of data concerning it, unless the data controller is obliged to keep secret classified information or professional secrecy in this respect; 5) obtain information on the method of sharing data, in particular information on the recipients or categories of recipients to whom the data is made available; 5a) obtain information on the grounds for the decision referred to in Art. 26a paragraph. 2 u.o.d.o.

The procedure for providing the above information is specified in Art. 33 paragraph 1 u.o.d.o., indicating that at the request of the data subject, the data controller is obliged, within 30 days, to inform about his / her rights and to provide, with regard to his personal data, the information referred to in art. 32 sec. 1 points 1-5a u.o.d.o.

It should be considered together with the corresponding Art. 34 points 1-4 u.o.d.o., pursuant to which the data controller refuses the data subject to provide the information referred to in art. 32 sec. 1 paragraphs 1-5a, if this would result in: 1) disclosure of messages containing classified information; 2) a threat to the state defense or security, human life and health, or public safety and order; 3) a threat to the basic economic or financial interest of the state; 4) significant infringement of personal rights of data subjects or other persons.

The fact that the Chief Commander of the Police indicated the judgments of the Supreme Administrative Court and the Voivodship Administrative Court in Warsaw should be considered correct. As the Provincial Administrative Court in Warsaw indicates in the justification of the judgment of 10 March 2011 (file reference number II SA / Wa 1885/10), "the provision of Art. 20 (2a) of the Police Act is a lex specialis in relation to Art. 33 (1) of the Act on the Protection of Personal Data The Police may process personal data of, inter alia, persons suspected of committing crimes not only without their consent, but, importantly in the case, without their knowledge. on the information held about him by the Police results from the need to limit access to information that may even indirectly reveal the operational methods of the Police, i.e. sources of information about crimes, links between criminal environments, etc. This, in turn, justifies the processing of personal data of persons referred to in art. 20 (2a) of the Police Act, without their knowledge ".

The above view was approved by the Supreme Administrative Court, which, while examining the cassation appeal in the above case, in its judgment of 19 December 2011 (file ref. I OSK 1100/11) indicated that "The court of first instance only as to Art. 33 u.o.d.o. found that this provision is inferior to the lex specialis which is Art. 20 paragraph 2a of the Police Act and the Supreme Administrative Court fully shares the view expressed in this respect in the justification of the judgment under appeal as to Art. 26 sec. 1 and 27 sec. 2 point 2 u.o.d.o.

Therefore, it is impossible to agree with the complainant's allegation that the said constitutional norm was violated by the Police Commander in Chief. Taking into account the above-mentioned case law, it should be concluded that in the present case the conditions set out in Art. 51 sec. 3 of the Polish Constitution. Access to the information in question has been limited at the statutory level by the aforementioned Art. 20a of the Police Act, which is a lex specialis to Art. 33 u.o.d.o.

The line of jurisprudence in this respect was continued in the judgment of the Provincial Administrative Court in Warsaw of January 10, 2014 (file reference number II SA / Wa 1648/13), in which the Court clearly indicates that "Art. 20 paragraph 2a of the Police Act is a lex specialis in relation to Art. 33 of the Act on the Protection of Personal Data. Since the legislator allowed

the Police to collect and process personal data even without the knowledge of the data subjects, it would be irrational to assume that at the same time it obliges the Police to inform these people about the circumstances described in Art. 32 sec. 1 points 1-5a of the Act on the Protection of Personal Data. There is a mutual contradiction between the above-mentioned regulations ".

In view of the above-cited judgments, one cannot agree with the complainant's statements that Art. 20a paragraph 2a of the Police Act introduces a limitation of the administrator's information obligation only with regard to the obligation to inform about data collection. They are in contradiction with the case law cited above, which gives a clear interpretation that the exclusion of application also applies to Art. 32 sec. 1 points 1-5a u.o.d.o.

However, referring to the Complainant's claim that the provisions of the implementing regulation on the KSIP did not exclude the right to demand fulfillment of the information obligation by the administrator of data collected in the KSIP in the scope specified in Art. 33 paragraph 1 of the PDA, it should be noted that § 16 point 9 of the repealed Regulation of the Minister of Internal Affairs of 31 December 2012 on the processing of information by the Police (Journal of Laws 2013.8 of 2013.01.04) stipulated that the administrator of the data set ensures registration, in a form appropriate to the properties of a given data set, each information processing operation, including personal data, in the scope of applications submitted in connection with the implementation of the rights specified in art. 32 sec. 1 point 6 and art. 33 of the Act on the Protection of Personal Data. It should therefore be stated that the said provision did not impose an information obligation on the Police Commander in Chief, but only an obligation to register data processing operations in the scope of submitted applications in connection with the implementation of the above-mentioned rights.

Thus, as confirmed by the jurisprudence, the KSIP is a collection of data of a special nature. This is undoubtedly reflected in the above-mentioned provisions, which, taking into account these special conditions, create for him a special, separate legal framework at the statutory and executive act level. This distinguishes it from an "ordinary" set of personal data processed, for example, for marketing purposes. The legislator, in accordance with the principle of a democratic state ruled by law, limits the right of access to it, even to persons whose data is or may be included in it. The specific nature of the data processed therein, as well as the purpose of ensuring public safety and order, require a special group of recipients. Hence, access to the above collection is primarily granted to the Police and other authorized state bodies, and the processing may be subject to control by an independent court.

Therefore, in view of the above, the complaint brought by the Complainant should be considered unfounded.

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 CAP, 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. 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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