

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

January

2019

## DECISION

ZSOŚS.440.43.2018

Based on Article. 105 § 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, art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), Art. 160 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), after administrative proceedings regarding the complaint of Ms BW and Mr WG (correspondence address: [...]), for the disclosure of their personal data to the District Court for W., 5th Division [...] by the Commander-in-Chief of the Border Guard based in Warsaw at Al. Niepodległości 100, 02-514 Warsaw,

I discontinue the proceedings

## JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms BW and Mr WG (correspondence address: [...]), hereinafter referred to as the Complainants, about disclosure to the District Court for W., 5th Department [...] by the Commander-in-Chief of the Border Guard, hereinafter referred to as the Commander, based in Warsaw at Al. Niepodległości 100, 02-514 Warsaw, the applicants' personal data in connection with the orders of the District Court for W., 5th Division [...] of [...] February 2017 and of [...] April 2017 . in the case with reference number Act [...]

It should be noted here that on the date of entry into force of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), i.e. May 25, 2018. The Inspector General for Personal Data Protection has become the Office for Personal Data Protection. Proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, 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 of Laws of 2016, item 922, as amended) in accordance with the principles set out in the Code of Administrative Procedure. All activities undertaken by the

Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In the content of the above-mentioned complaints The applicants submitted that, in their opinion, the above-mentioned the orders were issued without a legal basis. The complainants pointed out that the judge-referent of the above-mentioned court case omitted the provisions of the Act of 29 August 1997 on the protection of personal data, incorrectly reading the provision of Art. 23 sec. 1 point 2 of the above-mentioned of the Act and incorrectly applied Art. 248 §1 of the Act of 17 November 1964 - Code of Civil Procedure by recognizing that the data controller may be required to produce a non-existent document.

According to the Complainants, this led to unauthorized processing of their personal data.

Considering the above, the applicants requested that the Commander-in-Chief of the Border Guard be ordered to remedy the deficiencies in the processing of their personal data.

In the course of the proceedings initiated by the above-mentioned through the complaint, the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

By letters of [...] August 2017, the Inspector General for Personal Data Protection informed the Complainants and the Commander of the initiation of proceedings in the case and asked the Commander to comment on the content of the complaint and submit written explanations. On [...] September 2017, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a letter from the Commander ([...]), in which he explained that [...] April 2017 . the National Headquarters of the Border Guard received an application from the District Court for W., 5th Division [...], ref. no. Act [...] of [...] April 2017 on the provision of information on the applicants' crossing the border of the Republic of Poland. The Commandant also explained that the Court's application of [...] April 2017 was not considered in the scope requested due to the lack of signature and seal of the person authorized to act on behalf of the Court and was sent back with a request to supplement and resend the application . By letters of [...] October 2018 and [...] November 2018, the President of the Office asked the Commandant whether the Commandant had disclosed the applicants' personal data to the District Court for W., 5th Department [.. .] in the case with reference number act [...], and if so, on what legal basis and to what extent. On [...] November 2018, the Office for Personal Data Protection received a letter from the Commander ([...]), in which he explained that no further receipt of the supplemented court requests for information about the Complainants crossing the border of the Republic of Poland was recorded , therefore the personal data of the applicants were not made available to the District Court

for W., 5th Division [...].

The President of the Office for Personal Data Protection informed the Complainants and the Commander in letters of [...]

December 2018 about conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility to comment on the collected evidence and materials and reported requests in accordance with the content of art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings.

In these facts, the President of the Personal Data Protection Office considered the following.

Regarding the processing of the Complainants' personal data by the Commander-in-Chief of the Border Guard, it should be noted that as a result of the investigation, it was found that this entity did not disclose the above-mentioned personal data for the benefit of the District Court for W., 5th Division [...].

Thus, pursuant to the provisions of Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096), hereinafter referred to as the Code of Administrative Procedure, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision on discontinuation of the proceedings, respectively, in whole or in part. The doctrine indicates that: "the redundant nature of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance. The prerequisite for discontinuation of the proceedings may exist even before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the proceedings, i.e. in a case already pending before the administrative authority "(B. Adamiak, J. Borkowski," Kodeks administracyjny. Komentarz, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491). It should also be mentioned the judgment of the Supreme Administrative Court of 21 September 2010, II OSK 1393/09, in which the position was expressed that the pointlessness of the administrative procedure means the lack of any element of the substantive legal relationship resulting in the fact that it is impossible to settle the case by resolving it. in essence. The discontinuation of administrative proceedings is a formal decision that ends the proceedings, without a substantive decision. Moreover, the Supreme Administrative Court stated in its judgment of 15 January 2010, I OSK 1167/09, that if the procedure is groundless, no decision on its essence can be issued.

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of

Administrative Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the case. . The irrelevance of the proceedings may also result from a change in the facts of the case.

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the Personal Data Protection Act. According to this provision, in the event of a breach of the provisions on the protection of personal data, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying, or failure to provide personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data. The condition for issuing by the authority the decision referred to in the above-mentioned provision is the existence of a breach of the right to the protection of personal data at the time of issuing the administrative decision.

In a situation where the Commandant in Chief of the Border Guard did not disclose the personal data of the Complainants, the legality examination, in the context of determining the possible existence of premises for the formulation of an order referred to in Art. 18 sec. 1 of the act, would of course be redundant.

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

Based on Article. 127 § 3 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096), from this decision, the party has the right to submit an application for reconsideration 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 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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