

**PRESIDENT
OF THE PERSONAL DATA
PROTECTION OFFICE**

Jan Nowak

Warsaw, 16th January 2023

DS.523.2942.2020.ZS.BS

DECISION

On the basis of Article 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (consolidated text: Dz. U. [Journal of Laws] of 2022 item 2000 as amended) and Article 7 (1) of the Act of 10 May 2018 on the personal data protection (consolidated text: Dz. U. [Journal of Laws] of 2019 item 1781) and on the basis of Article 60 (6) and (8) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1, OJ L 127, 23.5.2018, p. 2 and OJ L 74, 4.3.2021, p. 35), after carrying out the administrative proceedings regarding the complaint of ██████████ ██████████ residing in Wrocław at ██████████ represented by legal advisor ██████████ from ██████████. law firm based in Wrocław at ██████████, relating to irregularities in the processing of ██████████ ██████████s residing in Wrocław at ██████████, personal data by ██████████ ██████████ based in Munich at ██████████ consisting in failure to comply with the information obligation in accordance with Article 15 of the above-mentioned Regulation, the President of the Personal Data Protection Office

dismisses the complaint.

JUSTIFICATION

The Personal Data Protection Office has received a complaint of ██████████ ██████████ residing in Wrocław at ██████████, hereinafter: the Complainant, represented by legal advisor ██████████ law firm based in Wrocław at ██████████ relating to irregularities in the processing of the Complainant's personal data by ██████████ based in Munich at ██████████ consisting in failure to comply with the information obligation in accordance with Article 15 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1, OJ L 127, 23.5.2018, p. 2 and OJ L 74, 4.3.2021, p. 35), hereinafter: the Regulation 2016/679.

According to Article 55 (1) of the Regulation 2016/679, each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State. Moreover, Article 56 (1) states that without prejudice to Article 55, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the

cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60.

The President of the Personal Data Protection Office, hereinafter also referred to as the President of the UODO, identified the case as having a cross-border nature in accordance with Article 4 point 23 of the Regulation 2016/679 and therefore handled the case over to the German supervisory authority competent for the federal state of Bavaria (German: *Bayerisches Landesamt für Datenschutzaufsicht*), hereinafter referred to as: BayLDA. Due to the fact that the main establishment of the Company is located in the territory of the federal state of Bavaria, the consideration of the case in question, due to the cross-border nature of the complaint, was within the exclusive jurisdiction of BayLDA, which accepted the case as the lead supervisory authority 26th February 2021.

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

1. The complaint was originally directed against [REDACTED] [REDACTED] with its registered office in Warsaw at [REDACTED] [REDACTED] hereinafter referred to as: [REDACTED]. The Complainant complained about the failure to receive the police report on the accident that took place on 15th October 2019 in the territory of the Federal Republic of Germany and claimed that there had been a violation of Article 6 (1)(f) and Article 15 (1) of the Regulation 2016/679 (proof: complaint of 27th May 2020; BayLDA draft decision of 6th October 2022).
2. The President of the UODO asked [REDACTED] S.A. for explanations regarding the facts of the case. Based on the explanations received on 20th August 2020, it was established that the data controller in connection with the processing challenged in the complaint is [REDACTED] with its registered office in Munich at [REDACTED] hereinafter referred to as: the Company (proof: complaint of 27th May 2020; explanations of [REDACTED] dated 20th August 2020; BayLDA draft decision of 6th October 2022).
3. The insurance case under consideration for the processing process challenged in the complaint concerns a motor vehicle liability claim that occurred on 15th October 2019 as a result of a traffic accident on the A4 motorway in Germany. The driver of the policyholder's vehicle crashed into the Complainant vehicle. At the time of the accident, apart from the Complainant, there were two other people in the vehicle, all three of the victims are Polish citizens and live in Poland (proof: complaint of 27th May 2020; explanations of the Company of 7th June 2021).
4. The Company confirmed the existence of a compulsory third party liability insurance contract concluded with the policyholder of German citizenship (the perpetrator of the accident). The insurance covers the operation of his vehicle under German license plates by him as a driver and keeper, as well as by other drivers who are also insured (proof: explanations of the Company of 7th June 2021).
5. The Company has established the sole liability of the driver of the vehicle covered by the insurance provided by the Company. Police records in criminal proceedings

against the driver of the policyholder's vehicle were also used to assess liability and insurance risk. For this purpose, the Company applied for access to the files to the competent investigative authority as part of legal representation in relation to the insurance contract, as a civil liability insurer (proof: explanations of the Company of 7th June 2021).

6. The Complainant applied to [REDACTED] as the Company's representative for claims, for the payment of compensation for the harm suffered (proof: complaint of 27th May 2020).
7. The Complainant was covered by the additional [REDACTED], therefore he also reported the damage to [REDACTED] with its registered office in Warsaw, hereinafter referred to as: [REDACTED] in order to obtain compensation. In order to carry out the liquidation of the damage, [REDACTED] asked the Complainant to present the documentation of the accident, including the police report on the accident, under pain of refusal to pay the benefit (proof: complaint of 27th May 2020).
8. In February 2020, the Complainant, through [REDACTED] asked the Company to provide the police report on the accident in order to present it to [REDACTED] for the purpose of liquidating the damage. The company replied to [REDACTED] that, for legal reasons arising from German criminal law, it was not possible to make the investigation files available to the Complainant. In the letter of 24th February 2020, [REDACTED] informed that the Company did not consent to the disclosure of the police note due to the protection of personal data (proof: complaint of 27th May 2020; letter of [REDACTED] to the Complainant of 24th February 2020 ; explanations of the Company of 7th June 2021).
9. On 14th May 2021, the Company sent a letter to the Complainant with information on the processing of his personal data. The company confirmed that it processes the Complainant's personal data. In addition, the Company provided the Complainant with information about: stored data (along with a list of stored data), processing purposes, recipients or categories of data recipients, the period of personal data storage, the rights of the data subject and the right to lodge a complaint with the supervisory authority and the origin of the data, provided that they have not been collected from the data subject (proof: explanations of the Company of 21st June 2021).

After reviewing the collected evidence, the President of the Personal Data Protection Office considered the following.

According to the wording of Article 60 (3) of the Regulation 2016/679, the lead supervisory authority shall, without delay, communicate the relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views. Where none of the other supervisory authorities concerned has objected to the draft decision submitted by the lead supervisory authority within the period referred to in paragraphs 4 and 5, i.e., respectively, four weeks for a draft decision or two weeks for a revised draft decision, the lead supervisory authority and the

supervisory authorities concerned shall be deemed to be in agreement with that draft decision and shall be bound by it (Article 60 (6) of the Regulation 2016/679).

As a rule, the lead supervisory authority shall adopt and notify the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the other supervisory authorities concerned and the European Data Protection Board of the decision in question, including a summary of the relevant facts and grounds, while the supervisory authority with which a complaint has been lodged shall inform the complainant on the decision (Article 60 (7) of the Regulation 2016/679). However, in accordance with Article 60 (8) of the Regulation 2016/679, by derogation from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.

BayLDA, after conducting the proceedings regarding the submitted complaint, acting pursuant to Article 60 (3) of the Regulation 2016/679, on 14th October 2022, submitted a draft decision of 6th October 2022, to the other supervisory authorities concerned, including the President of the Personal Data Protection Office, for their opinion and take due account of their views. Within the four-week period referred to in Article 60 (4) of the Regulation 2016/679, none of the other supervisory authorities concerned has objected to the draft decision submitted by the lead supervisory authority.

The President of the Personal Data Protection Office, as the supervisory authority concerned, is therefore bound by the draft decision of BayLDA of 6th October 2022 pursuant to Article 60 (6) of the Regulation 2016/679. Due to the agreement reached by the lead supervisory authority and the supervisory authorities concerned that the complaint should be dismissed, in accordance with the disposition of Article 60 (8) of the Regulation 2016/679, the President of the Personal Data Protection Office, as the supervisory authority with which a complaint has been lodged, adopts this decision and notifies it to the Complainant and informs the Company (data controller) thereof.

Considering the above, the President of the Personal Data Protection Office agreed with the decision, factual findings and legal justification presented by BayLDA in the draft decision of 6th October 2022 and accepted them as his own.

When issuing an administrative decision, the President of the Personal Data Protection Office is obliged to settle the case based on the facts existing at the time of issuing the decision. As stated in the doctrine, “the public administration authority assesses the facts of the case at the time 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 body issues an administrative decision on the basis of the provisions of law in force at the time of its issuance (...). Settling in administrative proceedings consists in applying the applicable law to the established facts of the administrative case. In this way, the public administration body achieves the goal of administrative proceedings, which is the implementation of the applicable legal norm in the field of administrative and legal relations, when these relations require it” (Commentary to the Act of 14 June 1960, Code of Administrative Procedure M. Jaśkowska, A. Wróbel, Lex., el/2012). At the same time, this authority shares the position expressed by the Supreme Administrative Court [Naczelny Sąd Administracyjny] in the

judgment of 25th November 2013, issued in the case with reference number I OPS 6/1, in which the above-mentioned Court indicated as follows: “In administrative proceedings, regulated by the provisions of the Code of Administrative Procedure, the rule is that the public administration body settles the case by issuing a decision that settles the case as to its essence, according to the legal and factual status as at the date of the decision”.

First of all, it should be pointed out that the administrative proceedings conducted by the President of the UODO are to control the compliance of data processing with the provisions on the protection of personal data and are aimed at restoring the lawful state by issuing an administrative decision pursuant to Article 58 (2) of the Regulation 2016/679.

In the judgment of 7th May 2008 in the case with reference number I OSK 761/07, the Supreme Administrative Court [Naczelny Sąd Administracyjny] stated that “when examining [...] the lawfulness of personal data processing, GIODO is obliged to determine whether, as of the date of issuing a decision in the case, the data of a specific entity is processed and whether it is done in a lawful manner”.

Pursuant to Article 15 (1) of the Regulation 2016/679, the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: (a) the purposes of the processing; (b) the categories of personal data concerned; (c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations; (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period; (e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing; (f) the right to lodge a complaint with a supervisory authority; (g) where the personal data are not collected from the data subject, any available information as to their source; (h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

Article 15 (3) of the Regulation 2016/679 states, that the controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

The collected evidence shows that in February 2020, the Complainant, through ██████████ asked the Company to provide a police note from the accident, which was supposed to contain his personal data, in order to present it to ██████ for the purpose of liquidating the damage. However, the evidence does not show that the Complainant requested the Company to provide information pursuant to Article 15 (1) of the Regulation 2016/679. Request to fulfill the information obligation towards the Complainant by indicating: what personal data concerning the Complainant were

processed, what were the purposes of processing, how long the data will be stored and to which recipients the Complainant's data have been or will be disclosed, and request to provide the Complainant with a copy of his personal data subject to processing, were formulated only in the letter of the Complainant's attorney of 31st July 2020, addressed to the President of the UODO. Therefore, it should be assumed that the Company received the above-mentioned requests together with the letter of BayLDA dated 21st April 2021 addressed to the Company.

According to Article 12 (3) of the Regulation 2016/679 the controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The collected evidence clearly shows that the Company responded to the Complainant's request for access to the processed data within the prescribed period and provided him with a copy of his personal data subject to processing. The Company submitted proof of the fact that on 14th May 2021 it provided the Complainant with information pursuant to Article 15 (1) of the Regulation 2016/679 and provided him with a copy of his personal data subject to processing, as requested by the Complainant's attorney in the letter of 31st July 2020, addressed to the President of the UODO, which was received by the Company on 21st April 2021. With regard to the above, the authority states that the Complainant's allegations are not supported by the evidence, because the Company has presented evidence for the timely and reliable fulfillment of the controller's obligations and exercising the Complainant's right to obtain information pursuant to Article 15 (1) of the Regulation 2016/679 and provided the Complainant with a copy of the personal data subject to processing in accordance with Article 15 (3) of the Regulation 2016/679.

Referring to the Complainant's allegation regarding the Company's refusal to provide a copy of the police note from the accident involving the Complainant, which took place on 15th October 2019 in Germany, BayLDA in the draft decision of 6th October 2022, followed by the President of the Personal Data Protection Office, being bound by the content of the draft decision pursuant to Article 60 (6) of the Regulation 2016/679, determined that the Complainant's request in this respect is manifestly unfounded.

The right to request access to personal data by the data subject is not unconditional. According to Article 15 (4) of the Regulation 2016/679, the right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others. On the other hand, the Article 12 (5) of the Regulation 2016/679 states that where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may, among others, refuse to act on the request.

The police note from the accident involving the Complainant, which took place on 15th October 2019 in Germany, is part of the police files, in relation to which the issue of access to documents is regulated by the provisions of German criminal procedure law. The right of access to the file is granted only within the narrow limits laid down in the provisions of the German Code of Criminal Procedure (StPO), expressly defined for this purpose by the German legislator and not against the insurance company, but against the competent investigating authority. The Company requested access to the file, taking

advantage of its subjective legal position as an insurer, which is an “other entity” under Article 475 of the German Code of Criminal Procedure (StPO). The investigating authority, recognizing the Company’s procedural rights, allowed the Company to exercise its right of access to files.

According to Article 32f (5) of the German Code of Criminal Procedure (StPO), persons who have been granted access to files are prohibited from distributing files, documents, printouts or copies obtained from them, passing them on to third parties for non-procedural purposes or otherwise making them available.

Pursuant to Article 23 (1)(d) of the Regulation 2016/679, Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard, among others, the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

Considering the above, the authority concluded that pursuant to Article 23 (1)(d) of the Regulation 2016/679, the provision of Article 32f (5) of the German Code of Criminal Procedure (StPO) constitutes a lawful limitation of the scope of the obligations and rights provided for in Article 15 of the Regulation 2016/679. The Company was under an obligation to refuse to provide the Complainant with a copy of the police report of the accident, as otherwise it would be subject to criminal liability for a violation of Article 32f (5) of the German Code of Criminal Procedure (StPO).

Just as an aside, the authority notes that the Complainant, who is granted the status of a victim of the accident under investigation by the provisions of the German Code of Criminal Procedure (StPO), should be entitled to access police files. However, the request for access to the files should be addressed to the investigating authority conducting the proceedings, and not – as was in this case – to the insurer (the Company).

Administrative proceedings conducted by the President of the Personal Data Protection Office are to control the compliance of data processing with the provisions on the protection of personal data and are aimed at issuing an administrative decision pursuant to Article 58 of the Regulation 2016/679, on the basis of which the supervisory authority may restore the lawful state. In the case in question, it was established that there was no violation of the Complainant’s rights under Article 15 (1) and (3) of the Regulation 2016/679. The Company responded to his request within the deadlines, and thus the allegation made by the Complainant against the Company was not confirmed. In addition, the Company, in accordance with Article 12 (5)(b) of the Regulation 2016/679, reasonably refused to take action in connection with the Complainant’s request to provide a copy of the police note from the accident, due to its manifestly unfounded nature, having regard the compliant with Article 23 (1)(d) of the Regulation 2016/679 limitation of the scope of obligations and rights provided for in Article 15 of the Regulation

2016/679 resulting from the provision of Article 32f (5) of the German Code of Criminal Procedure (StPO). In view of the above, there are no grounds for applying corrective measures aimed at restoring the lawful state. Considering the above, the President of the Personal Data Protection Office decided to dismiss the complaint.

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

Under the authority of the President
of the Personal Data Protection Office
the Head of the Complaints Department

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The decision is final. Based on Article 7 (2) of the Act of 10 May 2018 on the personal data protection (consolidated text: Dz. U. [Journal of Laws] of 2019 item 1781) and in connection with Article 13 § 2, Article 53 § 1 and Article 54 of the Act of 30 August 2002 Law on proceedings before administrative courts (consolidated text: Dz. U. [Journal of Laws] of 2022, item 329, as amended), the party has the right to lodge a complaint against this decision to the Provincial Administrative Court in Warsaw [Wojewódzki Sąd Administracyjny w Warszawie], within 30 days from the date of delivery of this decision, through the President of the Personal Data Protection Office (address: Urząd Ochrony Danych Osobowych, ul. Stawki 2, 00 - 193 Warsaw). The court fee for a complaint is PLN 200. The party has the right to apply for the right of assistance.