

Decision of the President of the Office for the Protection of Personal Data

DKN.5112.13.2020

Warsaw, 24 August 2020

Pursuant to Article 104 § 1 and Article 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended), Article 7 paragraph 1, Article 60, Article 102 paragraph 1 point 1 and paragraph 3 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2010, No. 153, item 256, as amended), Article 7 paragraph 1, Article 60, Article 102 paragraph 1 point 1 and paragraph 3 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2010, No. 153, item 256, as amended). U. of 2019, item 1781) and Article 57(1)(a), Article 58(2)(d) and (i) in conjunction with Article 5(1)(a), Article 6(1), as well as Article 83(1-3) and Article 83(5)(a) of Regulation 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 (General Data Protection Regulation) (OJ L 119, 04.05.2016, p. 1, as amended), after the administrative proceedings on the infringement of the provisions on the protection of personal data in connection with the processing of personal data by the Chief Surveyor of the Country, the President of the Office for Personal Data Protection,

I. By stating that the Chief Surveyor of the Country has violated: Article 5(1)(a) of Regulation 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 (General Data Protection Regulation) (OJ L 119, 04.05.2016, p. 1, as amended) hereinafter referred to as "Regulation 2016/679", i.e. the principle of lawfulness of personal data processing and Article 6(1) of Regulation 2016/679, by making it available on the portal called "GEOPORTAL2" ("geoportal.gov.pl") without a legal basis for personal data concerning land and mortgage register numbers obtained from the land and building register (kept by starosts),

orders the Chief Surveyor of the Country to adapt the processing of personal data to the provisions of Regulation 2016/679, within 14 days from the date of delivery of this decision, through: ceasing to make available on the portal called "GEOPORTAL2" ("geoportal.gov.pl") personal data concerning land and mortgage register numbers obtained from the land and building register (kept by starosts).

II. For breach of the provisions of Article 5(1)(a) and Article 6(1) of Regulation 2016/679, it imposes an administrative fine of PLN 100,000 (one hundred thousand zlotys) on the Chief Surveyor of the Country.

III. In the remaining scope, the proceedings are discontinued.

Justification

On [...] March 2020, pursuant to Article 78 section 1, Article 79 section 1 point 1 and Article 84 section 1 point 1-4 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as the "Act", in connection with Article 57(1)(a) and (h), Article 58(1)(b), (e) and (f) of Regulation 2016/679, in order to control the compliance of the processing of personal data with the provisions on the protection of personal data, control activities were carried

out at the Chief Surveyor of the Country (place of control - Main Office of Geodesy and Cartography with its seat in Warsaw, Wspólna 2).

In accordance with the scope indicated in the personal authorisations, the planned inspection was aimed at examining the process of making personal data from the land and building register available by the Chief Surveyor of the Country through the GEOPORTAL2 website (geoportal.gov.pl). However, the Chief Surveyor of the Country thwarted the control activities in the planned scope. He refused to give any testimony as to the legality of publishing information about land and mortgage register numbers on GEOPORTAL2 (geoportal.gov.pl), as well as he did not allow the inspectors to examine the IT systems used in the process of publishing data on GEOPORTAL2. The above mentioned circumstances resulted in the decision of the President of the Office for Personal Data Protection of [...] July 2020. (ref. [...]) imposing an administrative fine on the Chief Surveyor of the Country for violation of Article 31 and Article 58(1)(e) and (f) of Regulation 2016/679.

Ultimately, in the course of the inspection, only documentation was obtained which specified the organizational measures applied by the Chief Surveyor of the Country to ensure data security and evidence confirming the appointment of the data protection officer.

The facts established in the course of the inspection (conducted to a limited extent) are described in the inspection protocol, which was signed [...] March 2020 by the Chief Surveyor of the Country without any reservations.

In this case it is important that the President of the Office for Personal Data Protection on February [...], 2020 carried out control activities (ref. [...]) in the Powiat Starostwo (**iSecure: powiat is an administrative unit in Poland, starostwo is an office; starosta is a government official at the head of the unit**) in J. The scope of control included the issue of making available by the Starostwo J. through the Internet portal called "GEOPORTAL2" (geoportal.gov.pl) personal data from the land and building register. In the course of the indicated inspection it was established that the Starosta J. does not publish personal data from the land and building register on the above mentioned portal, but the data from the said register (including the land and mortgage register numbers), on the basis of the concluded agreement, shall be transferred to the Chief Surveyor of the Country, who shall make the information obtained in this way available on the GEOPORTAL2. In view of the above, the President of the Office for the Protection of Personal Data has decided that it is necessary to conduct an inspection at the Chief Surveyor of the Country.

In the course of the inspection the Chief Surveyor of the Country testified that "in the case of 90 county districts which do not yet have their own technical infrastructure, the Chief Surveyor of the Country, on the basis of the agreements concluded (concluded pursuant to Article 5 of the Surveying and Cartographic Law), after receiving the relevant surveying data from these counties, shall publish these data on the GEOPORTAL website2" - the record of the examination of the witness is attached as Appendix 1 to the inspection record under the number DKN.5112.13.2020.

In connection with the above, it should be stated that the Chief Surveyor of the Country publishes on GEOPORTAL2 (geoportal.gov.pl) the information obtained from the land and building register (including land and mortgage register numbers) kept by the Starost J., as well as by other district governors who do not have the technical infrastructure to publish this information on GEOPORTAL2.

On the basis of the evidence gathered in the case, it was established that in the process of personal data processing the Chief Surveyor of the Country violated the regulations on personal data protection. The breaches consisted of:

1) making available on the GEOPORTAL2 website (geoportal.gov.pl) without legal basis the data obtained from the land and building register (kept by starosts) concerning the land and mortgage register numbers (infringement of Article 5(1)(a) and Article 6(1) of Regulation 2016/679);

2) failure to indicate in the register data processing activities, for activities with names: "Registration of users of the forum of the Geoportal website", "Registration of users of the project repository", "Registration of participants of Geoportal training courses" that are related to the Geoportal, information about the planned dates of data deletion (infringement of Article 30(1)(f) of Regulation 2016/679);

3) failure to indicate in the register of personal data processing activities for activities with names: "Registration of users of the Geoportal system and GUGiK field systems", "Registration of users of the forum of the Geoportal website", "Registration of users of the project repository" and "Registration of participants in the Geoportal training courses" of the required security measures for the given processing activity (violation of Article 30(1)(g) of Regulation 2016/679).

In this respect, by letter of [...] March 2020. (mark: DKN.5112.13.2020), the President of the Office for the Protection of Personal Data initiated ex officio administrative proceedings in respect of the identified breaches, in order to clarify the circumstances of the case.

Moreover, by the decision of [...] April 2020. (mark: DKN.5112.13.2020), the President of the Office for the Protection of Personal Data obliged the Chief Surveyor of the Country to limit the processing of personal data in the area of land and mortgage register numbers, ordering the cessation of their publication on the GEOPORTAL2 website (geoportal.gov.pl) until an administrative decision ending the proceedings in this case is issued. On April [...], 2020, the Office for the Protection of Personal Data received a letter (sign: [...]) in which the Chief Surveyor of the Country demanded, among other things, that the execution of the order be suspended, indicating that the order issued threatens the stability of the state's spatial information systems, but did not justify this demand in any way, focusing only on the lack of legitimacy of the order.

On April [...], 2020, the Office for the Protection of Personal Data received a complaint from the Chief Surveyor of the Country, represented by S. K. advocate and P. T. advocate (power of attorney in the case file), addressed to the Voivodship Administrative Court in Warsaw, against the decision of the President of the Office for the Protection of Personal Data of April [...], 2020. (mark: DKN.5112.13.2020).

In response to the notice of initiation of administrative proceedings, the Attorney of the Chief Surveyor of the Country in a letter dated May [...], 2020, submitted explanations in which he indicated, among other things, that the initiation and conduct of proceedings by the President of the Office for the Protection of Personal Data in this case is pointless and therefore the proceedings should be discontinued in full. Justifying his position in the case, the Attorney of the National Surveyor General indicated that:

1. No mandatory prior control proceedings were conducted against the Chief Surveyor of the Country, which is a gross violation of Article 90 of the Personal Data Protection Act, because the control of the President of the Office for the Protection of Personal Data was conducted in the Main Office of Geodesy and Cartography, and not at the Chief Surveyor of the Country,

who is a separate data controller from the point of view of the provisions of Regulation 2016/679.

2. The President of the Office for the Protection of Personal Data unjustifiably stated that the data from the land and building register, including in particular the land and mortgage register numbers processed at www.geoportal.gov.pl constitute personal data, and thus that the President of the Office for the Protection of Personal Data is entitled to take action regarding their processing.
3. The President of the Office for the Protection of Personal Data unjustifiably stated that the controller of the data from the land and building register published on the www.geoportal.gov.pl website is the Chief Surveyor of the Country.
4. The control preceding the initiation of the proceedings concerned making available the data from the land and building register, including in particular the land and mortgage register numbers. However, the allegation of violation of Article 30(1)(f) and (g) of Regulation 2016/679 concerns processing activities in which the data are not used at all. Therefore, the President of UODO was not able to carry out any control with respect to these processes. The initiation of proceedings in this respect is therefore unfounded, as it was not preceded by an obligatory inspection.
5. The President of the Office for the Protection of Personal Data unjustifiably stated that the register of personal data processing activities kept by the Chief Surveyor of the Country pursuant to Article 30 of Regulation 2016/679 should specify the planned dates for removing data from the register of land and buildings published at www.geoportal.gov.pl and include a general description of technical and organizational security measures for the processing of such data. Irrespective of that, in the opinion of the Attorney of the Chief Surveyor of the Country, the infringement of Article 30 section 1 letter f and letter g of Regulation 2016/679 within the scope indicated by the President of UODO, did not take place because the register in question was kept in accordance with legal requirements.
6. The Chief Surveyor of the Country considers that he is not the addressee of the obligations under Article 5(1)(a), Article 6(1) and Article 30(1)(f) and (g) of Regulation 2016/679 with respect to the data from the land and building register (in particular the land and mortgage register numbers) published on the www.geoportal.gov.pl website and therefore cannot violate the aforementioned provisions.
7. In accordance with Article 15zszs(9) of the Act of 2 March 2020 on special arrangements for the prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them, the authority in the period of an epidemic emergency or a state of epidemic announced due to COVID may issue a decision fully considering the party's request. Therefore, despite the suspension of the course of procedural deadlines in administrative proceedings pursuant to Art. 15zszs sec. 1 pt. 6 of the above mentioned Act, the Attorney of the Chief Surveyor of the Country has requested the President of UODO to discontinue the proceedings in their entirety without the need to continue the administrative proceedings.

The following documents were attached to the above mentioned letter constituting a response to the notice of initiation of the procedure: extract from the documentation concerning the control, copy of the Agreement no. [...] of [...] February 2018 with the annex no. [...] of [...] May 2019 and annex no. [...] of [...] March 2020.

Moreover, it should be pointed out that in point 5 of the letter of May [...], 2020, the Attorney of the Chief Surveyor of the Country explained that "on the day of the inspection it was not possible to determine the planned dates of data deletion, because in this respect the analysis was ongoing (after the completion of the analysis process, which took place after receiving the inspection protocol, the dates were indicated in the register). Due to the fact that the explanations provided did not constitute grounds for concluding that the Chief Surveyor of the Country does not violate Article 30 Section 1 (f) of the Regulation, by letter of June [...], 2020. The President of the Office for the

Protection of Personal Data requested the Attorney of the Chief Surveyor of the Country to send evidence confirming the inclusion in the register of data processing activities of information on the planned dates of data deletion.

By letter dated July [...], 2020. the Attorney of the Chief Surveyor of the Country submitted explanations in which he indicated that:

- in the register of personal data processing activities for activities with names: "Registration of users of the project repository", "Registration of participants of the Geoportal training courses", which are related to the Geoportal, currently includes information about the planned dates of data removal referred to in Article 30.1.f of Regulation 2016/679,

- in the register of personal data processing activities for activities with names: "Registration of users of the Geoportal system and field systems GUGiK", "Registration of users of the project repository" and "Registration of participants of the Geoportal training courses", there is already a description of the technical and organizational security measures referred to in Article 32 paragraph 1 of Regulation 2016/679,

- currently, the Chief Surveyor of the Country does not perform the activity called "Registration of users of the forum of the Geoportal website" and therefore does not process personal data within this activity. The above action has been deleted from the register of data processing activities.

Moreover, to the letter of [...] July 2020. the Attorney of the Chief Surveyor of the Country attached a printout of the register of processing activities together with an electronic medium containing an electronic record of that register.

Having familiarized himself with all the evidence gathered in the case, the President of the Office for Personal Data Protection weighed the following:

The President of the Office for the Protection of Personal Data is a competent authority for the protection of personal data (Article 34 of the Act) and a supervisory authority within the meaning of the provisions of Regulation 2016/679 (Article 34, paragraph 2 of the Act).

I. Referring to the position of the Chief Surveyor of the Country contained in the response to the initiation of proceedings, from which it follows that the President of the Office for the Protection of Personal Data violated Article 90 of the Act, because the inspection was carried out in the Main Office of Geodesy and Cartography, and not at the Chief Surveyor of the Country, who is a separate controller of personal data, it should be indicated that in accordance with Article 81, paragraph 2, point 5 of the Act, the personal authorization to carry out the inspection includes the designation of the inspected person. Moreover, it should be noted that in accordance with Article 90 of the Act, if, on the basis of information collected during the control proceedings, the President of the Office for Personal Data Protection considers that a breach of the provisions on personal data protection may have occurred, he is obliged to immediately initiate proceedings.

It is undisputed that in the content of the personal authorisations to carry out the inspection, as well as in the inspection protocol, the Chief Surveyor of the Country is indicated as the controlled entity. First of all, when assessing the registered authorizations to carry out the inspection, it should be pointed out that the part determining the scope of the inspection clearly shows that the inspection concerned making available by the Chief Surveyor of the Country through the GEOPORTAL2 website

personal data from the land and building register. It should be noted here that the provisions of the Personal Data Protection Act do not specify or include a delegation to the minister in charge of internal affairs (or any other) to specify the specimen of personal authorization to carry out the inspection, in which the place designated to determine the controlled entity would be indicated in a precise manner. As a consequence, the indication of the controlled entity in the name-specific authorisation is located in the place most appropriate for this purpose in the opinion of the President of UODO. With regard to the registered authorisations issued in connection with the inspection planned at the Chief Surveyor of the Country, this took place in the part of the authorisation where the detailed scope of the inspection was indicated together with the indication of the controlled entity, i.e. the Chief Surveyor of the Country.

Moreover, referring to the information on the name and address of the Main Office of Geodesy and Cartography contained in the content of the authorization to carry out the inspection, it should be pointed out that this information refers only to the indication of the organizational unit with the help of which the Main Surveyor of the Country carries out his tasks, including the activities covered by the scope of the inspection. From art. 6 of the Act of 17 May 1989. Geodesic and Cartographic Law (Journal of Laws of 2020, item 276), it follows that the Chief Surveyor of the Country, who performs his tasks with the assistance of the Chief Office of Geodesy and Cartography, is the central body of government administration competent in matters of geodesy and cartography. Therefore, the designation of the Main Office of Geodesy and Cartography was only intended to indicate the actual place of inspection by the President of the Office for Personal Data Protection.

Moreover, the scope of the inspection contained in the registered authorisations refers only to the activity of the Chief Surveyor of the Country and not to the activity of the Chief Office of Geodesy and Cartography. Therefore, it is undisputed that the subject of the inspection was the Chief Surveyor of the Country.

It should also be pointed out that the Chief Surveyor of the Country in the course of the inspection questioned the scope of the inspection, while he had no doubts that he was the controlled entity as the body of the surveying and cartographic service. This is confirmed both by the statements made by the Chief Surveyor of the Country for refusing to carry out the inspection in the planned scope, as well as by his testimony made during the inspection.

It is also impossible to agree with the position of the Attorney of the Chief Surveyor of the Country, who believes that it is inadmissible for the President of the Office for the Protection of Personal Data to initiate administrative proceedings in a situation where the inspection has not been conducted. Recognition of such a position would in practice mean that it would be impossible to initiate proceedings in every case where the controlled entity would frustrate an inspection. Such a state of affairs is present in this case, because the Chief Surveyor of the Country has thwarted the full scope of the inspection. There is no doubt that the consequence of a deliberate violation of the law by the Chief Surveyor of the Country cannot be an omission on the part of the President of the Office for Personal Data Protection. In this situation, the President of the Office for the Protection of Personal Data is obliged to take appropriate actions in the light of the provisions of the General Regulation on Data Protection, as well as the Act on Personal Data Protection.

Regardless of the above, the incorrect interpretation of Article 90 of the Act by the Attorney of the Chief Surveyor of the Country should also be questioned. It should be pointed out that the aforementioned provision does not specify the catalogue of entities against which the President of the Office for Personal Data Protection may initiate administrative proceedings, and in particular it does not restrict the catalogue to controlled entities only. It means that the supervisory authority

may initiate administrative proceedings against each entity if only the information collected in the control proceedings indicates that the personal data protection regulations have been infringed.

In the case in question, the Chief Surveyor of the Country has thwarted the possibility of examining within the framework of control activities by the personal data protection authority such an important matter as the legality of publishing on GEOPORTAL2 (geoportal.gov.pl) information about land and mortgage register numbers.

In the course of the inspection, he only provided documentation specifying the organizational measures taken to ensure data security and evidence of the appointment of the Data Protection Officer. Nevertheless, in the event of refusal to carry out the inspection, the Chief Surveyor of the Country has given testimony that "in the case of 90 county districts which do not yet have their own technical infrastructure, the Chief Surveyor of the Country on the basis of agreements concluded (concluded pursuant to Article 5 of the Surveying and Cartographic Law), after receiving the relevant surveying data from these counties, the Chief Surveyor of the Country shall publish these data on the GEOPORTAL2 website". Therefore, in the case in question, despite the fact that the Chief Surveyor of the Country thwarted the full scope of the inspection, the President of UODO, on the basis of the collected evidence in the present case, undoubtedly found irregularities in the process of processing of personal data by the Chief Surveyor of the Country in connection with the provision of personal data (in terms of land and mortgage register numbers) on Geoportal2 (geoportal.gov.pl) without legal basis. Throughout the proceedings, the Chief Surveyor of the Country did not indicate any legal provision which would constitute the legal basis for his actions in the scope referred to above. Consequently, it should be considered that pursuant to Article 90 of the Act, the President of the Office for the Protection of Personal Data had the basis to initiate administrative proceedings against the Chief Surveyor of the Country for the infringement of the provisions on personal data protection.

It is also impossible to agree with the position of the Attorney of the Chief Surveyor of the Country contained in the response to the initiation of the proceedings, from which it results that the President of the Office for the Protection of Personal Data unjustifiably considered that the data from the land and building register, including in particular the land and mortgage register numbers processed at www.geoportal.gov.pl constitute personal data and therefore the President of the Office for the Protection of Personal Data is not entitled to take action with respect to their processing.

It should be noted that according to Article 4 point 1 of Regulation 2016/679, "personal data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, identification number, location data, internet identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

It is undisputed in this case that the entities to which the particular rights and obligations disclosed in the land and mortgage registers relate are also natural persons. The scope of data disclosed in the land and mortgage register includes, among others, names, surnames, parents' names, PESEL number, property address. On this basis it should be stated that the land and mortgage register numbers published (on the GEOPORTAL2 portal) allow for identification of persons whose data are included in the land and mortgage register. Due to the above, there is no doubt that having

information about the land and mortgage register number enables easy and simple access to personal data of persons disclosed in the land and mortgage registers. Obtaining access to personal data contained in the Land and Mortgage Register does not require the persons having this number to have access to a dedicated IT system or to have special rights. A computer connected to the Internet is sufficient. What is more, the Chief Surveyor of the Country, by his actions, enabled the users of the portal in question to directly access the contents of land and mortgage registers, because the land and mortgage register numbers placed on Geoportal2 (geoportal.gov.pl) are at the same time links redirecting the user to the website of the Ministry of Justice to electronic land and mortgage registers. This functionality of Geoportal2 (geoportal.gov.pl) resulted in the fact that the user of this portal did not even have to provide the land and mortgage register number in order to get access to the information contained therein, including the personal data of the owner of a given property. Consequently, it should be pointed out that the land and mortgage register number is information which allows to indirectly identify a natural person (i.e. the owner of a given property). Therefore, it should be considered that the land and mortgage register number constitutes personal data within the meaning of Article 4(1) of Regulation 2016/679.

The position of the Attorney of the Chief Surveyor of the Country is also unfounded. In response to the initiation of the proceedings, the Attorney of the Chief Surveyor of the Country pointed out that the President of the Office for the Protection of Personal Data unjustifiably considered that the controller of the data coming from the land and building register published on the website www.geoportal.gov.pl is the Chief Surveyor of the Country.

It should be pointed out that according to Article 4 point 7 of Regulation 2016/679 'controller' means a natural or legal person, public authority, entity or other body which alone or jointly with others determines the purposes and means of the processing of personal data; if the purposes and means of such processing are defined in Union law or in the law of a Member State, the controller may also be designated in Union law or in the law of a Member State, or specific criteria for its designation may be laid down. It is undisputed in this case that it is the Chief Surveyor of the Country who publishes on Geoportal2 (www.geoportal.gov.pl) the land and mortgage register numbers obtained from the land and building register kept by the district governors. At this point it should be pointed out that the planned inspection was primarily aimed at determining what role the Chief Surveyor of the Country plays in the process of publishing the land and mortgage register numbers on Geoportal2. Unfortunately, also in this respect, the Chief Surveyor of the Country prevented the President of the Office for the Protection of Personal Data from establishing this issue. Nevertheless, it should be noted that in the Regulations of the SERVICE www.geoportal.gov.pl (placed on the website www.geoportal.gov.pl.) there is information from which it results that "The controller of your personal data is the Chief Surveyor of the Country with the seat in Warsaw, Wspólna 2, 00-926 Warszawa".

Referring to the position of the Attorney of the Chief Surveyor of the Country, contained in the response to the initiation of proceedings, from which it follows, inter alia, that the Chief Surveyor of the Country in connection with the publication of land and mortgage register numbers on www.geoportal.gov.pl, does not violate the provisions of Article 5(1)(a) and Article 6(1) of Regulation 2016/679, as it is not the addressee of these provisions, the following should be indicated:

According to Article 5(1)(a) of Regulation 2016/679, personal data must be processed lawfully, fairly and transparently for the data subject.

As stated in Article 6(1)(a) of Regulation 2016/679, personal data must be processed lawfully, fairly and transparently to the data subject. As stated in Article 6(1) of Regulation 2016/679, processing is lawful only where and to the extent that one or more of the following conditions are met: (a) the data subject has consented to the processing of his or her personal data for one or more specified purposes; (b) processing is necessary for the performance of a contract to which the data subject is party or to take action at the request of the data subject before the contract is concluded; (c) processing is necessary for compliance with a legal obligation to which the controller is subject; (d) processing is necessary for the protection of the vital interests of the data subject or of another individual; (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of public authority vested in the controller.

In the course of the inspection, the Chief Surveyor of the Country testified that "in the case of 90 county districts which do not yet have their own technical infrastructure, the Chief Surveyor of the State, on the basis of the agreements concluded (concluded pursuant to Article 5 of the Geodesic and Cartographic Law), after receiving the relevant surveying data from these counties, shall publish these data on the GEOPORTAL2 website".

In connection with the above, it should be stated that the Chief Surveyor of the Country publishes on GEOPORTAL2 the information obtained from the land and building register (including the land and mortgage register numbers) kept by district governors who do not have the technical infrastructure to publish this information on GEOPORTAL2.

It is undisputed in this case that the functionality of GEOPORTAL2 allows, on the basis of the land and mortgage register number made available by the Chief Surveyor of the Country to persons using this portal, to get acquainted with the scope of information contained in the given land and mortgage register. In accordance with Article 364(6) of the Act of 6 July 1982 on land and mortgage register and mortgage (Journal of Laws 2019, item 2204), anyone who knows the land and mortgage register number can browse the land and mortgage register free of charge through the ICT system. Therefore, due to the inclusion of the land and mortgage register number in the GEOPORTAL2, everyone may familiarize himself with its contents even if he has not previously had the number.

It should be pointed out that, in accordance with Article 25 section 1 of the Act on Land and Mortgage Registers and Mortgage, the Land and Mortgage Register contains four sections, of which: 1) the first one includes designation of real estate and entries of rights related to its ownership; 2) the second one includes entries related to ownership and perpetual usufruct; 3) the third one is intended for entries related to limited rights in rem, with the exception of mortgages, for entries related to limitations in the disposal of real estate or perpetual usufruct and for entries of other rights and claims, with the exception of claims related to mortgages; 4) the fourth one is intended for entries related to mortgages.

Therefore, it should be emphasized again that the entities to which particular rights and obligations disclosed in the land and mortgage registers relate are, among others, natural persons. The scope of data disclosed in the land and mortgage register includes, among others, first names, surnames, first names of parents, PESEL number, property address. On this basis it should be concluded (which has also been shown in the earlier part of this decision) that the land and mortgage register numbers disclosed to the public (on GEOPORTAL2) allow indirect identification of natural persons and thus constitute personal data within the meaning of Article 4(1) of Regulation 2016/679. As indicated by the Supreme Administrative Court in the justification of the judgment of 26 September 2018, file ref. I OSK 11/17, "receipt of information concerning the designation of the land and mortgage register

enables easy and simple access to the content of the entire land and mortgage register, i.e. all IV departments, including the personal data contained therein. The aim of applying for obtaining data concerning the land and building register concerning the land and mortgage register designation is not to obtain "a set of marked digits and signs", but to obtain subjective data concerning the property owner, which can be obtained in a simple manner with "a set of marked digits and signs", that is the land and mortgage register designation. As a consequence, it should be considered that the disclosure of land and mortgage register numbers on GEOPORTAL2 (geoportal.gov.pl) violates the data protection of the persons concerned.

At this point it should be pointed out that, in accordance with Article 364 section 16 of the Act on Land and Mortgage Registers and Mortgage, the Central Information enables the authorities running the real estate cadastre, for real estate from a specific locality, commune or district, to verify the compliance of land and building registry data with the data contained in the Land and Mortgage Registers, to obtain, through an ICT system, free of charge, the data contained in section 1 and 2 of the Land and Mortgage Registers, without the right to make it available to third parties.

It should be pointed out that the GEOPORTAL2 project was developed within the framework of establishing the infrastructure of spatial information in the European Community (INSPIRE). The project of developing such an infrastructure is regulated by the provisions of Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an infrastructure for spatial information in the European Community (INSPIRE). The scope of data contained in spatial data sets is defined in the Annexes to Directive 2007/2/EC. The indicated scope does not include data concerning ownership or legal status of real estate, which are covered by the set.

According to recital 24 of Directive 2007/2/EC, the provision of network services (such as making data available through the Geoportal2) should be in accordance with the rules for the processing of personal data. In addition, Article 13(1)(f) of the Directive states that Member States may limit public access to spatial data sets and services if their provision would adversely affect the confidentiality of personal data, if the data subject has not consented to the public disclosure of the information, and if the confidentiality of the data is provided for in national or EU legislation.

It is also necessary to mention article 5a section 4 of the Act on Geodesic and Cartographic Law, which imposes an obligation on the Chief Surveyor of the Country to apply safeguards against abuse or illegal access or transfer of personal data processed in connection with, among others, running the state surveying and cartographic resource and creating and maintaining an integrated system of information about real estate.

It should be pointed out that from the content of the agreement no. [...] of [...] November 2018. (concluded by the Chief Surveyor of the Country with the Starost J.) it follows that the agreement was concluded on the basis of Article 5 of the Act of May 17, 1989. Geodetic and cartographic law in connection with art. 7 and art. 9 section 1 of the Act of 4 March 2010 on spatial information infrastructure (Journal of Laws of 2018 item 1472). The content of this agreement defines the purpose of cooperation, i.e. supplementing and improving the functioning of the elements of the national land information system, which is a component of the spatial information infrastructure. The scope of information provided by Starosta J. (and then published by the Chief Surveyor of the Country at GEOPORTAL2), in accordance with the above agreement, includes, among others, the land and mortgage register numbers of properties located on the territory of Powiat J.

It should be pointed out that in accordance with Article 11 of the Spatial Information Infrastructure Act, access to spatial data sets and services is subject to limitation on the basis of, among others, provisions on personal data protection.

The protection of personal data is currently governed by the provisions of Regulation 2016/679. These provisions have established the basic principles for the processing of personal data, including the principle of lawfulness, formulated in Article 5(1)(a) of Regulation 2016/679. The principle of lawfulness, "also referred to as the lawfulness of data processing, implies the requirement to comply with the standards laid down by law. The principle of lawfulness of data processing has a wide range of subjects, not only the provisions of the Regulation in question, but also those contained in other normative acts. (...) Among the provisions on data processing a special role is played by the requirements relating to the lawfulness of the processing (also referred to as the so-called grounds for the admissibility of data processing or prerequisites for the lawfulness of data processing), set out in the provisions of Articles 6, 9 and 10 of the commented regulation. These regulations indicate the cases when data processing is legally permissible (in simple words: when personal data can be legally processed)" (Fajgielski Paweł, Commentary to Regulation No. 2016/679 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 (General Data Protection Regulation), [in:] General Data Protection Regulation. The Data Protection Act. Comments). Therefore, the Chief Surveyor of the Country as a public administration body should have a premise allowing not only the collection of land and mortgage register numbers but also their public availability within the spatial information infrastructure (GEOPORTAL2). In the present case, however, the Chief Surveyor of the Country cannot rely on any of the conditions set out in Article 6(1) of Regulation 2016/679, and in particular the condition set out in Article 6(1)(c), according to which the processing of the data is necessary to fulfil the legal obligation imposed on the controller.

As it has been shown above, none of the provisions regulating the issues related to the activity of the Chief Surveyor of the Country allows making such data available within the framework of GEOPORTAL2 (geoportal.gov.pl), and even Article 364(16) of the Act on Land and Mortgage Registers and Article 5a(4) of the Act on Geodetic and Cartographic Law results in the prohibition to make them available to third parties. On this basis it should also be concluded that the premise indicated in Article 6 Section 1(e) of Regulation 2016/679 cannot be applied. The other prerequisites for the admissibility of personal data processing listed in Article 6(1) of Regulation 2016/679, due to their nature, cannot constitute the basis for processing personal data in this case.

At the same time, it should be pointed out that the Chief Surveyor of the Country was aware of the lack of legal regulations that would constitute the legal basis for publishing the land and mortgage register number on Geoportal2 (geoportal.gov.pl). This is clearly evidenced by the fact of concluding agreements with district governors in this respect. These agreements, pursuant to Article 5 paragraph 2 of the Act on Geodesic and Cartographic Law, are, however, to relate to the creation and maintenance of common elements of technical infrastructure designed to store and make available specific data sets, and not to constitute a legal basis for making available (publishing) data, including the land and mortgage register number. Such a basis, as already demonstrated above, must result from generally applicable legal regulations.

Moreover, it should be pointed out that the Chief Surveyor of the Country as a public administration body cannot hide himself from the fact that he does not decide what information is disclosed in the land and mortgage register.

It should be pointed out that the Chief Surveyor of the Country, by publishing the land and mortgage register number on Geoportal2 (geoportal.gov.pl) together with a link to the website of the Ministry of Justice with the Electronic Land and Mortgage Register system, was to enable the users of geoportal.gov.pl to quickly and easily access the contents of the land and mortgage register whose number was disclosed, including the personal data of the property owner.

Consequently, it should be considered that making the land and mortgage register numbers available on GEOPORTAL2 (geoportal.gov.pl) without a legal basis results in violation of Article 5(1)(a) and Article 6(1) of Regulation 2016/679 by the Chief Surveyor of the Country. It should also be pointed out that in the doctrine of law the position is represented that making personal data from public collections available in the absence of an explicit legal basis relating to the making available operation is unlawful. In order for the processing (including disclosure) of personal data to be lawful, it is necessary to indicate the legal basis for the processing. It is undisputed in this case that no legal provision authorizes the Chief Surveyor of the Country to publish on GEOPORTAL2 (geoportal.gov.pl) information about the land and mortgage register numbers, and moreover, the Chief Surveyor of the Country himself is not able to indicate the legal basis for his action.

It should also be pointed out that the Act on Land and Mortgage Registers and Mortgage contains regulations which ensure the implementation of the principle of openness of land and mortgage registers. These are, in particular, the provisions of Article 364, paragraphs 5 and 6 of this Act. As it results from these regulations, the Central Land and Mortgage Register Information makes it possible to browse the Land and Mortgage Register through the ICT system, and anyone who knows the Land and Mortgage Register number can browse the Land and Mortgage Register free of charge through the ICT system. The legislator thus indicated how the openness of the land and mortgage register is ensured and which entities are responsible for it. None of these provisions, as well as other provisions of the Act on Land and Mortgage Registers and Mortgage, confer competence in this respect on the Chief Surveyor of the Country. Moreover, no provision of universally binding law implies the task of the Chief Surveyor of the Country to ensure the public availability of the land and mortgage registers and information contained therein. The assignment of this task by the Chief Surveyor of the Country is not only a violation of Article 7, but also of Article 47 and 51(2) of the Constitution of the Republic of Poland, since it leads to a violation of the protection of personal data disclosed in the contents of the land and mortgage register. At this point it is necessary to remind again the above mentioned judgment of the Supreme Administrative Court of September 26, 2018, file ref. I OSK 11/17, in the justification of which the Court stated that "the openness of the land and building register means that the information contained in the register is not classified information as defined by law, but it does not mean universal access to it." The above statement clearly applies also to land and mortgage register numbers.

II. Pursuant to Article 58(2)(a) to (h) and (j) of Regulation 2016/679, each supervisory authority shall have the power to impose, in addition to or instead of the other remedies provided for in Article 58(2)(a) to (h) and (j) of that Regulation, an administrative penalty payment under Article 83 of Regulation 2016/679, depending on the circumstances of the specific case. In view of the findings of fact, the President of the Office for the Protection of Personal Data, in exercising his powers under the aforementioned provision of Regulation 2016/679, stated that in the case in question there were conditions justifying the imposition of an administrative fine on the Chief Surveyor of the Country.

In determining the amount of the penalty, the President of the Office for Personal Data Protection took into account the following circumstances of the case, which had an impact on the amount of the financial penalty imposed:

1. the gravity and nature of the infringement - the Chief Surveyor of the Country by his actions in the process of making available on the GEOPORTAL2 (geoportal.gov.pl) website (geoportal.gov.pl) data obtained from the land and building register (kept by starosts) concerning the land and mortgage register numbers, without legal basis, violates the principle of lawfulness of data processing referred to in Article 5(1)(a) of Regulation 2016/679. The findings made by the President of the Office for the Protection of Personal Data allow to conclude that the infringement in question concerns a very large number of persons. The mass scale of such a phenomenon was confirmed by the Chief Surveyor of the Country himself, who indicated in the justification of his refusal to carry out the inspection that such a situation concerns at least 90 poviast starosties. Undoubtedly, publishing on the GEOPORTAL2 (geoportal.gov.pl) internet portal the numbers of land and mortgage registers together with a link which directly allows everyone to get acquainted with personal data (in the scope of: first and last name, address, PESEL number and often information about debt) contained in land and mortgage registers exposes a very large number of people (the data subjects) to theft of their identity.
2. Duration of infringements - according to the findings made by the President of UODO, the publication of land and mortgage register numbers on this portal is made by the Chief Surveyor of the Country at least since 2019.
3. Intentional nature of the infringement - the Chief Surveyor of the Country as a public administration entity should act only on the basis of the law. In the opinion of the President of the Office for the Protection of Personal Data, due to the lack of legal basis which would authorize the Chief Surveyor of the Country to obtain information from the land and building register (including land and mortgage register numbers) kept by starosts in order to publish it on GEOPORTAL2 (geoportal.gov.pl), the Chief Surveyor of the Country decided to conclude agreements with starosts. Unfortunately, the agreements concluded, in the opinion of the President of the Office for the Protection of Personal Data, do not constitute a legal basis for such activities conducted by the Chief Surveyor of the Country. It should be emphasized that the Chief Surveyor of the Country, when deciding to publish on GEOPORTAL2 (geoportal.gov.pl) information about the land and mortgage register numbers, was aware that, in the opinion of the supervisory authority, the land and mortgage register number is subject to the regulations on the protection of personal data and, therefore, their processing should comply with those regulations. The circumstances of the present case show undoubtedly that the Chief Surveyor of the Country, although he was aware of the position of the supervisory authority in this case, decided to publish the land and mortgage register numbers on GEOPORTAL2 against this position. On this basis, it should be concluded that the Chief Surveyor of the Country violates the data protection regulations in the above scope.
4. High degree of responsibility of the Chief Surveyor of the Country as a public administration entity, which undoubtedly should uphold the rule of law, and whose activity (in the scope of publishing land and mortgage register numbers on GEOPORTAL2) violates the applicable laws, which results in unauthorized access to personal data of an unlimited number of people, because access to this source of information about, among others, land and mortgage register numbers can be used by any interested Internet user.

Moreover, it should be noted that:

1. Undoubtedly, publishing the land and mortgage register numbers on GEOPORTAL2 (geoportal.gov.pl) exposes a very large number of people to theft of their identity. The actions of the Chief Surveyor of the Country in the scope of thwarting the full scope of the inspection did not allow to obtain evidence which would directly prove that the consequence of the infringement was damage on the part of data subjects. Nevertheless,

there is no doubt that further publication of information about the land and mortgage register number on GEOPORTAL2 poses a risk of exposing a significant number of individuals to interference with their privacy (actions taken to minimize damage).

2. It has not been established that the Chief Surveyor of the Country had previously committed a breach of the provisions of Regulation 2016/679, which would be material to this proceeding.
3. The President of the Office for the Protection of Personal Data has obtained information that a portal called "GEOPORTAL2" has been made available ("geoportal.gov.pl") without a legal basis for the personal data concerning the land and mortgage register numbers in the course of another inspection, which was carried out at the Starosta J. (the manner in which the supervisory authority learned of the breach).
4. In the same case, the President of the Office for the Protection of Personal Data, on the basis of Article 70, paragraphs 1 and 2 of the Act on the Protection of Personal Data, issued a decision (mark: DKN.5112.13.2020) on April [...], 2020, obliging the Chief Surveyor of the Country to limit the processing of personal data in the field of land and mortgage register numbers, ordering the cessation of their publication on the GEOPORTAL2 website until the administrative decision ending the proceedings in this case is issued.

In determining the amount of the administrative fine, the President of the Office for the Protection of Personal Data did not find any grounds to consider that there were any mitigating circumstances affecting the final amount of the fine.

In the case in question, the authority did not consider the circumstances referred to in Article 83(2)(j) of the General Data Protection Regulation when imposing the penalty, due to the lack of application by the controller of codes of conduct and approved certification mechanisms.

Deciding whether or not to impose an administrative fine, as well as determining its amount, the President of the Office for the Protection of Personal Data has recognized the serious nature of the infringement resulting from the disclosure of personal data without legal basis to other persons than the data subjects.

Moreover, the President of the Office for the Protection of Personal Data has taken into account that the assessed body is a public sector entity.

At this point, it is also necessary to point out the content of art. 102 of the Personal Data Protection Act, which results in limiting the amount (to 100 000 PLN) of the penalty that may be imposed on a public sector unit.

The President of the Office for the Protection of Personal Data, when imposing the maximum penalty, took into account the high gravity of the infringement. In the opinion of the President of the Office for the Protection of Personal Data, the applied administrative fine of 100 000 PLN fulfills in the established circumstances of this case the functions referred to in art. 83 section 1 of the general regulation on data protection, i.e. it is effective, proportionate and dissuasive in this individual case.

The penalty shall be deemed effective if its imposition leads the Chief Surveyor of the Country to comply with the applicable provisions of law and to permanently cease further violation of

personal data protection by disclosing the land and mortgage register numbers on GEOPORTAL2 (geoportal.gov.pl).

In the opinion of the President of the Office for the Protection of Personal Data, the financial penalty applied is proportional to the infringement found, in particular due to the gravity of the infringement, the mass nature of the infringement and the duration of the infringement.

The dissuasive nature of the financial penalty is related to the prevention of future infringements and the greater importance attached to the performance of the controller's tasks. The penalty is intended to deter both the controller from repeating a violation and other entities. In imposing this decision an administrative fine for a breach of personal data protection regulations, the President of the Office for the Protection of Personal Data has taken into account both aspects: first - the repressive nature, the Chief Surveyor of the Country violated the provisions of the general data protection regulation, second - the preventive nature, both the Chief Surveyor of the Country and other controllers will be effectively discouraged from violating the personal data protection law in the future, while at the same time exercising greater care in performing their duties under the general data protection regulation.

The purpose of the penalty imposed is to ensure the proper performance of the duties provided for in Article 5(1)(a) and Article 6(1) of the General Data Protection Regulation by the Chief Surveyor of the Country and, as a consequence, to carry out data processing in accordance with the applicable laws.

III. At the same time, on the basis of the explanations provided by the Attorney of the Chief Surveyor of the Country in the letters of May [...], 2020 and July [...], 2020, as well as the attached other evidence, it should be stated that the remaining deficiencies being the subject of the present proceedings have been removed by the Chief Surveyor of the Country.

Currently in the register of personal data processing activities for activities with names: "Registration of users of the project repository", "Registration of participants of the Geoportal training courses", which are related to the Geoportal, contains information about the planned dates of data removal referred to in Article 30 paragraph 1 letter f of Regulation 2016/679.

Moreover, in the register of personal data processing activities for activities with names: "Registration of users of the Geoportal system and GUGiK field systems", "Registration of users of the project repository" and "Registration of participants in the Geoportal training courses" contains a description of the technical and organizational security measures referred to in Article 32(1) of Regulation 2016/679.

From the explanations of the Attorney of the Chief Surveyor of the Country included in the letter of [...] July 2020 also shows that currently the Chief Surveyor of the Country does not perform the activities called "Registration of users of the forum of the Geoportal website" and therefore does not process personal data as part of this activity. The above action was deleted from the register of data processing activities.

Taking into account the above, the President of the Office for Personal Data Protection decided as in the operative part of this decision.

The decision is final. The party 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, through the President of the Office for Personal Data Protection (address: 2 Stawki Street, 00 - 193 Warsaw). A relative entry must be made against the complaint, in accordance with art. 231 in connection with art. 233 of the Act of August 30, 2002. Law on proceedings before administrative courts (Journal of Laws of 2018, item 1302, as amended). A party (natural person, legal entity, other organizational unit without legal personality) has the right to apply for the right of assistance, which includes exemption from court costs and establishment of an advocate, legal adviser, tax advisor or patent attorney. The right of assistance may be granted at the request of a Party made before or during the proceedings. The application is free of court fees.

Pursuant to Article 105, paragraph 1 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), an administrative fine shall be paid within 14 days from the date of expiry of the deadline for filing a complaint with the Provincial Administrative Court, or from the date on which the decision of the administrative court becomes final, to the bank account of the Office for the Protection of Personal Data in the NBP O/O Warszawa no. 28 1010 1010 0028 8622 3100 0000. Moreover, according to art. 105 sec. 2 of the above mentioned act, the President of the Office for the Protection of Personal Data may, upon a justified request of the punished entity, postpone the date of payment of the administrative fine or spread it out in instalments. In the case of a postponement of the date of payment of the administrative fine or its distribution in instalments, the President of the Office for the Protection of Personal Data shall calculate interest on the unpaid amount on an annual basis, with the application of a reduced rate of interest for delay, announced on the basis of art. 56d of the Act of August 29, 1997. - Tax Ordinance (Journal of Laws of 2019, item 900, as amended), from the day following the date of application submission.

In accordance with Article 74 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), the lodging of a complaint by a party to the administrative court suspends the execution of the decision on the administrative fine.