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Anna Wolska-Bagińska

Procedure for Verifying the Accuracy of Personal Data Collected in the Sex Offender Register

Procedura weryfikacji dokładności danych osobowych zgromadzonych w Rejestrze Sprawców Przestępstw na Tle Seksualnym

Introduction

In order to ensure public safety and order by protecting society from perpetrators of sexual offenses, the Act on combating the threats of sexual crimes and on the protection of minors has been introduced into the Polish legal system. To achieve the primary objective of this Act, a number of actions regarding personal data are undertaken in the Register of Sex Offenders.

1. Processing of personal data

The processing of personal data in the Sex Offender Register is one of the basic tasks of the Information Office of the National Criminal Register indicated in Article 5 of the Act on combating the threats of sexual crimes and on the protection of minors (Act of 13 May 2016 on combating the threats of sexual crimes and on the protection of minors [Ustawa z dnia 13 maja 2016 r. o przeciwdziałaniu zagrożeniom przestępczością na tle seksualnym i ochronie małoletnich], consolidated text: Journal of Laws [Dziennik Ustaw] of 2024, item 560 as amended; hereinafter: Act of 2016). The tasks listed in Article 5 section 1 of the Act of 2016 are tasks that, pursuant to the Act on the protection of personal data processed in connection with preventing and combating crime (Act of 14 December 2018 on the protection of personal data processed in connection with preventing and combating crime [Ustawa z dnia 14 grudnia 2018 r. o ochronie danych osobowych

przetwarzanych w związku z zapobieganiem i zwalczaniem przestępczości], consolidated text: Journal of Laws of 2023, item 1206; hereinafter: Act of 2018) and Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (Official Journal of the European Union L 119, 4.05.2016, pp. 89–131) are assigned to the data controller. The powers granted to the Information Office do not conflict with the provisions on the protection of personal data. The provision of Article 5 section 2 of the Act of 2016 states clearly that the administrator of the personal data collected in the Register is the Minister of Justice, and this is in no way changed by the additional statutory provision that the processing of data and securing personal information collected in the Register against access by unauthorized persons is handled on behalf of the administrator by a subordinate organizational unit of the office serving the Minister of Justice. It should be noted that according to the content of Article 4 section 2 of the Act of 2016, the Sex Offender Register is held by the Minister of Justice. Only to the extent specified in the Act is the implementation of the tasks related to maintaining the Register ensured by the Information Office of the National Criminal Register, which is part of the Ministry of Justice. The Information Office is, therefore, part of the administrative unit of the Ministry of Justice responsible for carrying out tasks under the Act, assigned to assist the Minister of Justice.

As the Information Office of the National Criminal Register undertakes various types of actions on personal information, data processing takes place during the entire process related to maintaining the Sex Offender Register. This process includes all operations performed on personal data, from the stage of collection to the stage of their deletion (Wolska-Bagińska, 2019b, p. 79).

The concept of personal data processing used under the Act on combating the threats of sexual crimes and on the protection of minors should be interpreted in the same way as under the Act of 14 December 2018 on the protection of personal data processed in connection with preventing and combating crime (Wolska-Bagińska, 2018, pp. 47–49). This activity will, therefore, include not only the activities indicated in Article 4 point 14 of the Act of 2018, but also other operations, provided that they concern personal data (Mednis, 1999, p. 27). For example, data processing will include operations related to downloading data from the National Criminal Register, providing information from the Register or deleting data from it.

When processing personal data, the Information Office of the National Criminal Register is obliged to observe and be guided by the principles established in the Act of 2018. This results from the fact that the basic objectives of the Act of 2016, which include ensuring public safety and order by protecting society against sex offenders, fall within the scope of application of the Act of 2018 (Sejm, 2016; Wolska-Bagińska & Bagiński, 2018, p. 45). Importantly, neither the Act of 2016 nor the Act of 2018 provides for a situation in which the application of the provisions of these acts is excluded in relation to each other. In Article 3 of the Act of 2018, the legislator did not mention the commented act as a legal act to which the provisions of the Act of 2018 do not apply (Projekt ustawy o ochronie danych osobowych przetwarzanych w związku z zapobieganiem i zwalczaniem przestępczości, 25.05.2018).

It should be noted here that the draft Article 1 section 2 of the Act of 2018 provided for the exclusion of the application of this Act to the protection of personal data contained in the Sex Offender Register. At that time, it was envisaged that the provisions of the Act of 2016 would apply to the protection of personal data contained in the Sex Offender Register (Ministerstwo Spraw Wewnętrznych i Administracji, 2023). Therefore, it should be assumed that the provisions of the Act of 2018 will apply to actions on personal data undertaken on the basis of the Act of 2016.

2. The principle of data accuracy

The objectives of the Act of 2016 are to be implemented through the availability of a range of information about the entities entered in the Sex Offender Register, including their personal data. What is important, it does not have to be only the information that alone makes it possible to identify a natural person (Wolska-Bagińska, 2017, p. 157). It can also be another type of information that is even indirectly related to a particular person (e.g. place of residence) which, in combination with other data included in the Sex Offender Register, makes it possible to identify that person. Information becomes personal data whenever it is possible to refer it to a specific entity. The perpetrator's personal information collected in the Sex Offender Register, referred to in Article 7 of the Act of 2016 falls within the concept of personal data, because it constitutes information about an identified or identifiable natural person. Personal data are the main element of information disclosed in the Register and their scope is specified in Article 7 of the Act of 2016.

The Sex Offender Register can fulfill its functions based on personal information only if it contains substantively accurate personal data of the entities included in it (Wolska-Bagińska, 2021, p. 91). Therefore, the data collected in the Register cannot be inconsistent with the actual data of the persons included in the Register. Based on Article 31 section 2 of the Act of 2018, the data controller is obliged to take all necessary steps to ensure that personal data that are incorrect, in the light of the purposes of their processing, are immediately deleted or rectified. Operations undertaken on outdated, erroneous or otherwise incorrect information may result in negative consequences for the data subject, as well as for the entities that process these data (Wolska-Bagińska, 2019a, p. 292). The above indicates the importance of the problem of ensuring the processing of substantively correct personal data, and thus ensuring the appropriate quality of the data disclosed in the Sex Offender Register. The principle of data accuracy is one of the basic principles of personal data protection (Barta, Fajgielski & Markiewicz, 2015, thesis 8 to Article 26). In practice, it means that the information resulting from the processed data should be true and complete and should correspond to the current state of affairs. The requirement to ensure the substantive accuracy of the processed data in the Sex Offender Register should be understood narrowly, i.e. to ensure the original spelling of personal data, and not only their correct wording. The above requirement may, however, create significant difficulties in practice, particularly in the case of personal data containing diacritical marks that do not occur in the Polish language (e.g., the name and surname of a foreigner).

3. Data verification procedure

In order to ensure the substantive accuracy of the data, the Act of 2016 in Article 19 imposes on the Information Office of the National Criminal Register the obligation to verify personal information collected in the Register in the event of circumstances indicating the likelihood of entering into the Register data that are inconsistent with the content of a judgment or those that do not correspond to the entries in the relevant documents, or are inconsistent with the factual state. The obligation to verify data is intended to prevent possible irregularities in the process of data processing in the Sex Offender Register. Therefore, when at least one of the above-mentioned conditions is likely to occur, the Information Office of the National Criminal Register takes steps to assess the accuracy of the personal data entered into the Register. Only personal data may be the subject of explanatory proceedings. This applies to data which identifies a person

included in the Register. Therefore, other information disclosed in the Register is not covered by this procedure.

The Act on combating the threats of sexual crimes and on the protection of minors (the Act of 2016), apart from specifying the method of collecting data for the purposes of the Sex Offender Register, does not contain any regulations providing for any participation of entities subject to entry in the Register when entering data. Therefore, in the event of irregularities, it does not provide for any appeal or control procedure that could be initiated by a person whose data is subject to entry in the Sex Offender Register. Only the possibility of reporting irregularities when entering data into the Register is provided for. It triggers an internal data verification procedure by the Information Office of the National Criminal Register. The above procedure may be initiated either at the request or on the initiative of the Information Office. However, this procedure takes place without the participation of the entities directly concerned who are only informed about the effects of the undertaken control activities (Article 19 section 5 of the Act of 2016).

A solution that does not provide for the participation of entities subject to entry in the Register should be considered as meeting the standards of a democratic state of law, because the validity of including data may be subject to appeal proceedings at the will of these entities in accordance with Article 9 section 5 of the Act of 2016. However, it remains an open question to what extent under Article 19 of the Act of 2016, an obligation to act actively on own initiative to check and rectify the data processed in the Register may be introduced and imposed on the Information Office of the National Criminal Register.

In the event of receiving information about an incorrect entry in the Register relating to the data collected from the National Criminal Register, the Information Office shall carry out the activities referred to in Article 18 of the Act on the National Criminal Register (Act of 24 May 2000 on the National Criminal Register [Ustawa z dnia 24 maja 2000 r. o Krajowym Rejestrze Karnym], consolidated text: Journal of Laws of 2024, item 276; hereinafter: Act of 2000). Therefore, if circumstances are found indicating that there is likelihood of personal data being entered into the Sex Offender Register that are inconsistent with the content of the judgment or do not correspond to the entries in the relevant files, proceedings are carried out to determine the correct data. An annotation on the initiation of such proceedings shall be placed on an appropriate registration card or notice.

During the proceedings, the Information Office should, first of all, compare the data entered into the Register with those collected in the National Criminal Register. The determination of the circumstances indicating the incompatibility

of the data collected in the National Criminal Record should automatically trigger the procedure referred to in Article 18 of the Act of 2000, as to the correctness of the data entered into the National Criminal Register. In the latter case, when findings are made that the data are incorrect, the Minister of Justice issues a decision to rectify the data entered into the National Criminal Register. The final decision, resolving the rectification process, is the basis for amending the relevant entries on the registration card or notice. Based on Article 18 section 3 of the Act of 2000 no proceedings are required to rectify obvious clerical and other errors in the National Criminal Record if it is done *ex officio* or is in accordance with the request of a party. Such an action is recorded in the form of an annotation on the appropriate registration card or notice, and the party is notified about it.

In turn, in the case of doubts regarding personal data obtained from the PESEL register or the Personal Identity Card Register, the Information Office requests the administrator of personal data collected in the PESEL Register or the Personal Identity Card Register to confirm the accuracy of the data provided, or to rectify the data in the PESEL register or the Personal Identity Card Register. The administrator of the personal data collected in the PESEL register and the Personal Identity Card Register is the Minister of Digitization (Article 55 section 2 of the Act of 6 August 2010 on identity cards [Ustawa z dnia 6 sierpnia 2010 r. o dowodach osobistych], consolidated text: Journal of Laws of 2023, item 1234 as amended; Article 12a section 1 point 11 of the Act of 4 September 1997 on the departments of government administration [Ustawa z dnia 4 września 1997 r. o działach administracji rządowej], consolidated text: Journal of Laws of 2024, item 834 as amended).

In a situation where doubts relate to the actual address of residence of a person included in the Register, the Information Office applies to the appropriate organizational unit of the Police to confirm the provided data or to send the correct data. In order to verify the above personal data, the Information Office submits a query whether the data provided in the documentation corresponds to facts or if any irregularities are found, it requests the rectification of the data in the appropriate register. Confirmation of the accuracy of the data, sending accurate data, or rectifying them constitutes the basis for making changes to the Register. However, the Information Office cannot independently correct personal data without making the above arrangements. Nevertheless, in the event of a discrepancy between the data from the PESEL register and the data collected in the National Criminal Register in accordance with § 5 section 2 of the Regulation of the Minister of Justice on determining the procedure and method of transferring data to the Sex Offender Register (Regulation of the Minister of Justice of

2 February 2017 on determining the procedure and method of transferring data to the Sex Offender Register [Rozporządzenie Ministra Sprawiedliwości z dnia 2 lutego 2017 r. w sprawie określenia trybu i sposobu przekazywania danych do Rejestru Sprawców Przepędstw na Tle Seksualnym], Journal of Laws of 2017, item 238; hereinafter: Regulation of the Minister of Justice of 2017) data are entered in the Register immediately after these discrepancies have been clarified.

Due to the multi-stage nature of entering data into systems (registers) from which data is downloaded to the Sex Offender Register and their transfer using data teletransmission devices using a secure, encrypted network connection, the occurrence of an error is rather marginal. However, it should be noted that technical issues regarding the design of IT programs through which personal information is processed cannot determine the processing of false, incomplete or outdated data (Judgment of the Provincial Administrative Court in Warsaw, 5 March 2007, II SA/Wa 2328/06).

Rectification of data in the National Criminal Register, the PESEL register or the Personal Identity Card Register, or the transmission of the correct actual address of the person included in the Register, shall constitute the basis for changing the data in the Sex Offender Register. Rectifying or sending the correctly indicated actual address of residence results in entering the correct personal data in the Register. Changes to the Register are made in the form of material and technical activities. Under the administrative procedure specified in Article 19 of the Act of 2016, it is not possible to determine whether there has been a legal effect of expungement and deletion of personal data from The Sex Offender Register.

If the circumstances referred to in Article 19 section 1 of the Act of 2016, concern the identity of a person or the legal qualification adopted in a judgment that may affect the collection of a person's data in the Register, the data about the person included in the Register are not made available on the website of the Public Information Bulletin of the Ministry of Justice, nor are they made available to the entities referred to in Article 12 of the Act of 2016. In these circumstances, data sharing is completely suspended. A specific situation justifying the cessation of data sharing is associated with the possibility of disclosing incorrect personal information that may affect the legitimacy of the processing of a person's data in the Sex Offender Register. The need to stop sharing data results primarily from the need to protect the privacy of a person included in the Register. In such cases, a person may be included in the Register for whom the legal classification adopted in the judgment does not include crimes against sexual freedom specified in Article 2 of the Act of 2016. In this situation, the personal data of such an entity have been unjustifiably entered into the Register.

Reservations to the data relating to the identity of a person included in the Register may, in turn, cause negative consequences for persons carrying identical data with those that have been placed in the Register, and about which there is a suspicion of their irregularities. However, in the event of other circumstances, data about a person included in the Sex Offender Register are made available on the website of the Public Information Bulletin of the Ministry of Justice and are made available to the entities referred to in Article 12 of the Act of 2016, along with information about the ongoing explanatory proceedings and its scope. The annotation of the proceedings is intended to serve as a warning. It indicates that to some extent there is or may be inconsistency of data disclosed in the Sex Offender Register. However, it is not conclusive that the data inconsistency actually takes place. Information about the ongoing explanatory proceedings and its scope is provisional. In principle, it should be deleted when the issue of the accuracy of the personal data entered into the Register has been clarified.

4. Data update

Ensuring the substantive correctness of personal data in the Register is associated with the obligation to keep the data up to date (Drozd, 2008, thesis 5 to Article 26). Personal data collected in the Register should not only be true, but also, as far as possible, up-to-date. The validity of data should be understood as the obligation of the data controller and the Information Office, which ensure the implementation of the tasks related to maintaining the Register by the Minister of Justice, to regularly (systematically) review personal data included in the Register in terms of their accuracy. However, it should be assumed that this obligation is not absolute in the sense that updating the data collected in the Register is required only when it is justified due to the purpose of data processing.

The procedure and conditions for updating personal data obtained from the PESEL register and the Personal Identity Card Register have been specified in § 6 of the Regulation of the Minister of Justice of 2017. Pursuant to the above legal act, the Information Office updates data by sending queries to the PESEL register including such data as: first name, surname, date of birth, gender, mother's name and mother's maiden surname. The Information Office sends the queries at least once a day. In turn, if there are obstacles that prevent sending the queries, they are sent immediately after these obstacles cease. If the Information Office obtains information about a change in data in the PESEL register, in order to obtain an image of the face of a person entered in the Register, it immediately

sends queries regarding the PESEL number obtained from the PESEL register to the Personal Identity Card Register. The data are entered in the Register immediately after they have been obtained. The PESEL Register and the Personal Identity Card Register respond immediately to the queries from the Information Office.

Conclusion

The Sex Offender Register processes a range of personal information about perpetrators, such as identification data, their facial image or PESEL number. Due to the availability of a variety of information about entities entered in the Sex Offender Register, the Information Office of the National Criminal Register is obliged to comply with the principles of personal data protection, including the principle of data accuracy. In this respect, the legislator has introduced procedures for verifying data disclosed in the Sex Offender Register, which are intended to ensure reliable processing of data in the Register.

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Summary

The article aims to present topics related to the processing of personal data collected in the Sex Offender Register. It discusses the tasks of the Information Office of the National Criminal Register relating to the process of verifying the accuracy of personal data included in the Sex Offender Register. The article also describes the procedure and conditions for updating the data processed in the Sex Offender Register.

KEYWORDS: Sex Offenders Registry, Information Office of the National Criminal Register, personal data, processing of personal data, data update

Streszczenie

Artykuł ma na celu przedstawienie zagadnień związanych z przetwarzaniem danych osobowych zgromadzonych w Rejestrze Sprawców Przystępstw na Tle Seksualnym, a także trybu i warunków ich aktualizacji. Omówione zostały również zadania Biura Informacyjnego Krajowego Rejestru Karnego związane z procesem weryfikacji poprawności danych osobowych zawartych w Rejestrze Sprawców Przystępstw na Tle Seksualnym.

SŁOWA KLUCZOWE: Rejestr Sprawców Przystępstw na Tle Seksualnym, Biuro Informacyjne Krajowego Rejestru Karnego, dane osobowe, przetwarzanie danych, aktualizacja danych

Nota o autorze

Anna Wolska-Bagińska – dr, Wydział Prawa i Administracji Uniwersytetu Gdańskiego, Krajowa Szkoła Sądownictwa i Prokuratury, prokurator; główne obszary działalności naukowej: prawo karne procesowe, ochrona danych osobowych, mediacje; e-mail: wolskaanna@vp.pl; ORCID: 0000-0002-6928-1416.