

GZ: DSB-D123.626/0006-DSB/2018 from April 23, 2019□

[Note editor: Names and companies, legal forms and product names,□

Addresses (incl. URLs, IP and email addresses), file numbers (and the like), etc., as well as□

their initials and abbreviations may be abbreviated for reasons of pseudonymization□

and/or changed. Obvious spelling, grammar and punctuation errors□

have been corrected.]□

NOTICE□

S P R U C H□

The data protection authority decides on Eduard A***'s data protection complaint□

(complainant) of October 15, 2018 against N*** Bauträger GmbH□

(Respondent) for violation of the right to secrecy as follows:□

- The complaint is dismissed.□

Legal bases: Sections 1 (1) and (2) and Section 24 (1) and (5) of the Data Protection Act□

(DSG), Federal Law Gazette I No. 165/1999 as amended; Section 7 of the General Land Register Act 1955□

(GBG), Federal Law Gazette No. 39/1955 as amended.□

REASON□

A. Submissions of the parties and course of the proceedings□

1. With a submission dated October 15, 2018, the complainant alleged an infringement□

in the right to secrecy. In summary, the complainant submitted that□

he received a letter from the Respondent expressing her interest in□

had announced the purchase of real estate owned by the complainant.□

2. With a statement dated November 16, 2018, the Respondent brought□

summarized, that it is specialized in the development of real estate and□

This also includes the supervision of housing projects and in particular the□

Real estate acquisition included. The acquisition of suitable project locations and objects□

essential for the development of projects and for the realization of the□

corporate purpose. The Respondent has the Appellant once
contacted by post. Generally available data are according to the wording of the law
expressly excluded from the scope of protection of § 1 Para. 1 DSG. the
The personal data on which the complaint is based are from the land register
been raised, which is why there is no recognizable interest worthy of protection
complainant is present. Furthermore, the Respondent has a legitimate
Interest in the processing of publicly accessible,
land register data for the purpose of direct advertising. In the event of an announcement that
the person no longer wants to be registered, the Respondent deletes the
data of the person concerned.

3. The complainant then replied - according to the parties to the results of the
investigation – in his statement of December 21, 2018
in summary, he had received such letters on an ongoing basis, but from
different senders. It is therefore interesting to find out whether
such mailings are legal.

B. Subject of Complaint

Based on the submissions of the appellant, it follows that
The subject of the complaint is whether the respondent is the complainant
thereby violated the right to secrecy by providing personal data
of the complainant from the land register and this data subsequently
used to contact the complainant by post for the purpose of possible
acquisition of ownership of a property belonging to the complainant
to contact.

C. Findings of Facts

The Respondent is a real estate trustee. To the line of business
Respondent also includes the purchase and management of (agricultural)

economic land.□

Evidence assessment: The statements made are based on an excerpt from the commercial register□
and on a GISA extract (both retrieved on April 19, 2019).□

The Respondent has the Austrian land register for the property in 1***□

Vienna, W***gasse *6, KGNr: 0*5*3, EZ: **3 queried and in this way the□

related contact details of the complainant. In further□

The Respondent has the consequence of those raised from the Austrian land register□

Data (extract from the land register) used to contact the complainant for the purpose of possible□

Acquisition of the mentioned property to be contacted once by post. the□

Contact details of the complainant were not otherwise used.□

Evidence assessment: The findings made are based on the credible□

Statement of the Respondent of November 16, 2018. The arguments of the□

Respondent was also in the further statement of the□

Complainant of December 21, 2018 not disputed.□

D. In legal terms it follows that:□

1. In the present case, it is personal data from the□

Land register (extract from the land register), which is publicly accessible according to § 7 para. 1 GBG.□

The fact that the land register is a public register□

according to the consistent case law of the OGH, however, only means that everyone in it -□

against reimbursement of costs - can inspect and obtain copies thereof, he means□

but not that the facts to be taken from the register are generally known or□

only have legal knowledge (see RIS RS0111112). In this respect it can be over□

For this reason, not simply from generally available data within the meaning of Section 1 (1) DSG□

to be spoken.□

2. According to the established Rsp of the data protection authority, the very general acceptance of the□

Non-existence of a violation of secrecy interests worthy of protection□

legitimately published data not compliant with the provisions of the GDPR

(cf. the notification of January 15, 2019, GZ DSB-D123.527/0004-DSB/2018 with regard to

to § 27 para. 1 ÄrzteG 1998 and the decision of October 31, 2018, GZ DSB-

D123.076/0003-DSB/2018 with further references).

3. In addition, it must be taken into account that the present use of the

personal data from the land register not limited to mere reproduction

limited. Unless permissibly published data is merely reproduced,

but a new element is linked to this data - such as creation

an informational added value (cf. the notification of January 15, 2019 loc

Creation of a "doctor evaluation platform") or specifically the use of the

Data on the possible acquisition of real estate as part of the business

Real estate trustee - this link is processing

according to Art. 4 Z 2 GDPR. Such a connection always requires one

Permission according to Art. 6, 9 or 10 DSGVO (cf. on the legal situation according to the DSG

2000 Kotschy in Jahnel (ed.), data protection law and e-government yearbook 2012, 27

[47], according to which by combining publicly available data with others

the admissibility of their use must be completely re-examined).

4. In the present case, the Respondent has legitimate interests under Art. 6

Paragraph 1 lit. f GDPR in the meeting. It should be recalled that objectively a

Violation of the right to secrecy was claimed, which is why the admissibility

or to check the weighing of interests according to the requirements of § 1 DSG

2 leg. cit. legitimate interests of another than

limitation of the right to secrecy.

5. Due to the fact that the personal data of the complainant

are already publicly accessible in the land register and are obviously not

data that is particularly worthy of protection within the meaning of Section 1 (2) second sentence DSG or sensitive data

iSv Art. 9 GDPR and also no criminally relevant data iSv Art. 10 GDPR

acts, a lower level of protection is generally to be assumed (cf.

such as the decision of the German Federal Court of Justice of September 23, 2014

GZ VI ZR 358/13 mwN, which depending on the sphere - such as "social sphere" and "professional sphere" -

assumes a different degree of protection, whereby these considerations also

transferable to data belonging to the public sphere).

6. In the present case, the personal data were taken from the land register

the Respondent used to send the complainant only once by post

to contact and this data - as determined - was not otherwise

used. In the opinion of the

Data protection authority therefore not before. Incidentally, by the complainant

no confidentiality interests worthy of protection were brought into play.

7. On the other hand, the Respondent's interest as a real estate trustee is

among other things through the purchase and management of (agricultural) land on an ongoing basis

to acquire new properties or plots of land which, from their point of view,

are of economic interest. Furthermore, the Respondent also offered

delete personal data of the complainant or another

to refrain from making contact (cf. Art. 29 Data Protection Working Party, Opinion

06/2014 on the concept of legitimate interest for processing

Responsible according to article 7 of the directive 95/46/EG, WP 217, 844/14/EN, p. 43,

according to which the implementation of protective measures for a data subject

can contribute to a balancing of interests in favor of the person responsible

fails).

8. Overall, the data protection authority therefore comes to the conclusion that due to the

carried out balancing of interests no violation of the right to secrecy

exists, since the legitimate interests of the Respondent as

Real estate trustee against the impairment of the legitimate interests of the □

complainant prevail (§ 1 Abs. 2 DSG). □

9. It was therefore to be decided in accordance with the verdict. □