

GZ: DSB-D130.073/0008-DSB/2019 from 9.10.2019□

[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 the privacy complaint of the minor□

A*** F*** (complainant), represented by the guardian Z*** F***, dated□

August 21, 2018 against N***Netzwerk GmbH & Co KG (respondent).□

Violation of the right to secrecy as follows:□

- The appeal is upheld and it is established that the Respondent□

the complainant thereby in the right to secrecy according to § 1 para. 1 DSG□

has violated by lack of appropriate technical and organizational□

Measures in accordance with Art. 32 GDPR ("Security of processing") has enabled that with□

the email address ***@***.com of the minor complainant, but without his□

Knowledge, the profile "****geilab14" on the operated by the Respondent□

Online dating portal www.dates***.com and the profile "bernd****" on the also from the□

Respondent-operated dating portal www.***frauen.com was created and the□

Complainants as a result of ongoing "contact suggestions" and notifications of□

Respondent to his e-mail address ***@***.com.□

Legal basis: Article 32 of Regulation (EU) 2016/679 (General Data Protection Regulation -□

GDPR), OJ No. L 119 of 4.5.2016; § 1 para. 1 and 2 as well as § 24 para. 1 and 5 of the□

Data Protection Act - DSG, Federal Law Gazette I No. 165/1999 as amended.□

REASON□

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

1. Z*** F***, as the legal representative of the minor complainant, brought A*** F***□

with submission of August 21, 2018, improved with submission of November 03, 2018 and with□

Submission of November 18, 2018, complaint and alleging violation of□

Art. 5, Art. 6, Art. 7 and Art. 8 GDPR.□

In summary, he submitted that the e-mail address of the minor□

Complainant ***@***.com was used without his knowledge to profile□

***geilab14" on the online dating portal operated by the Respondent□

www.dates***.com and the profile "bernd ***" on which is also from the Respondent□

operated dating portal www.***frauen.com to register. This has led to□

the underage complainant constantly sends dating or sex offers to his e-mail□

address ***@***.com.□

A registration – according to the legally represented complainant – and access□

to the online portal ("dates***") with any e-mail address and without□

Integrity check according to Art. 5 Para. 1 lit. f GDPR possible. It may happen□

Forwarding to third parties not mentioned in the data protection declaration such as (e.g. "***-Date",□

"|***").□

On June 24, 2018, Z*** F*** received messages in the minor's inbox□

complainant found. It is not possible to unsubscribe from the notifications□

been. He immediately sent a cease and desist message to the respondent□

transmitted and pointed out that the complainant was a minor. On July 08, 2018□

I urged Z*** F*** to reply, which he received on August 10, 2018. It have□

further e-mail correspondence with the Respondent. The minor□

Complainant has the two profiles "***geilab14" and "bernd***" for the e-mail address□

@.com certainly not self-created. Rather, it can be assumed that a□

unknown person the two profiles on those operated by the Respondent□

created online dating portals.□

The complaint is directed against the fact that creating a profile on the - from the□

Respondent operated - online dating portals without double opt-in procedure and□

possible without verifying the age of the "interested party" requesting via e-mail address□

may be. Z*** F*** can prove on the basis of a "self-test" that has been carried out that for the□

Creation of a profile and subsequent use of the Respondent's services□

the mere registration with an e-mail address without carrying out a double opt-in□

procedure is sufficient.□

For the two profiles "****geilab14" and "bernd****" - so the legally represented□

Complainant further - there is no confirmation of the implementation of the double opt-in□

Procedure and an age check, which the sending of sex offers to the as well□

legitimize the disclosure of the complainant's e-mail address ***@***.com.□

2. In its statement of February 8, 2019, the Respondent brought□

Essentially, that requires a user to create a profile on the one they operate□

Online dating portals www.dates***.com and www.***frauen.com his gender, the□

Enter the desired user name, password and an e-mail address as well as the□

accept the Respondent's Terms and Conditions and Entertainment Policy.□

After registration, the user will receive an email to the specified address□

Message asking them to activate their profile or provide their email address□

confirm. The user can also log in without activating his profile or confirmation□

log into his profile with his email address, but he would be prompted again□

be asked to confirm their email address. He also had to state his age.□

The profile can only be activated after clicking on the activation link sent to the e-mail□

address of the user will be activated. The user cannot change his profile□

activate if he does not have access to the e-mail address used. Only after□

After activation, the user will receive another e-mail.□

3. By letter from the data protection authority dated February 15, 2019 to GZ: DSB-D130.073/0001-

DSB/2019 the respondent became the supplementary as follows

Opinion requested:

"The DSB understands your statement to the effect that a user (after creation

his profile) can then already log into his profile on your website without the

Activation link - in the message sent to his email address - to activate

have to. Is that right?

Which services can the user use if he has logged into his profile, although he

not activated yet? Please demonstrate this with screenshots."

4. In a statement dated February 28, 2019, the Respondent submitted the following:

"We are happy to answer your questions as follows.

It is correct that the user logs in after registration and explicit confirmation

his age and place of residence and the request to send his DoubleOptIn email

confirm that the portal can be used to a limited extent.

The request to confirm his DoubleOptIn email comes regularly

Rhythm (every 3-5 minutes) within the portal as long as the user does not confirm this

has.

It is possible for the user to make limited use of some services on the portal.

We have attached the following screenshots as an example."

[Editor's note: the graphic inserted at this point in the original

Files/screenshots were removed because they were not pseudonymised with reasonable effort

can become.]

4. The complainant brought in the context of the hearing of the parties with a statement of

March 22, 2019 summarized that based on the documents submitted by him

it has been proven that even without activating the profile, messages are actually only sent to the

email address to be confirmed would be sent. That in the opinion of

The double opt-in procedure mentioned by the Respondent does not apply, certainly

also to encourage potential users to activate the profile. He can

- so the legally represented complainant further - via a test account if necessary

prove. He could not make a reasonable effort to realize that the real age

the user will be determined.

Despite the lack of profile activation via the double opt-in procedure, the minor

Unsolicited inappropriate contact requests have been sent to the complainant.

In summary, the legally represented complainant - even after knowing the

Respondent's comments on the registration procedure for their

Online dating portals - from a violation of the GDPR by unlawful

Processing/use of the e-mail address ***@***.com.

B. Subject of Complaint

Based on the submissions of the legally represented complainant, it follows that

The subject of the complaint is whether the respondent is the complainant

thereby violated the right to secrecy by failing to provide suitable information

technical and organizational measures in accordance with Art. 32 GDPR ("Security of the

Processing") has enabled that with the email address ***@***.com des

Complainant, but without his knowledge, the profile "****geilab14" on the

Respondent operated online dating portal www.dates***.com and the profile

"bernd****" on the dating portal also operated by the Respondent

www.***frauen.com and the complainant as a result

"Contact suggestions" and notifications of the Respondent to his e-mail

address ***@***.com.

C. Findings of Facts

The Respondent is registered under the name "N***Netzwerk GmbH & Co KG" in

Registered under the company register number *****a.

Evidence assessment: This results from the - carried out by the data protection authority□

– Query of the company register as of October 4, 2019.□

In any case, the Respondent operated the online dating portals until February 28, 2019□

www.***frauen.com and www.dates***.com.□

Evidence assessment: This results from the data protection authority on the part of the□

Opinions submitted by the Respondent dated February 8 and 28, 2019. So□

are in particular in the Respondent's statement of February 28, 2019□

contain the following information: "www.***frauen.com is an offer from: N***Netzwerk□

GmbH & Co KG" and "www.dates***.com is an offer from: N***Netzwerk GmbH & Co□

KG".□

To create a profile or to register on these dating portals□

www.***frauen.com and www.dates***.com the user must state his gender, his□

Enter your desired username, password and email address. Further must□

the user agrees to the terms and conditions by ticking a box□

Explain Respondent's entertainment policies. Under point II.□

("conclusion of contract") 1. of the terms and conditions, "persons under the age of 18 and those who□

Acting on behalf of a third party" from using the Services.□

Evidence assessment: This results from the statement of the Respondent dated□

February 8, 2019 and from official research by the data protection authority on the□

Websites www.***frauen.com and www.dates***.com on October 4, 2019.□

By logging into his profile on the Respondent's websites www.***frauen.com□

and www.dates***.com, the user can already use the services of the respondent from□

Use the time of creating a profile, ie from registration, without registering□

again by clicking on an "activation link" that takes him to the - upon registration□

specified - e-mail address was sent to have to confirm.□

Evidence assessment: This results from the statement of the Respondent dated□

February 28, 2019.□

The e-mail address specified when creating a profile (= when registering) will be□

Creation of the profile continuously fed with notifications from the respondent.□

Evidence: This results from the credible submissions of the□

Complainant together with the - submitted at the same time as the complaint - to the e-mail□

Respondent's notifications sent to address ***@***.com.□

The complainant's email address is ***@***.com.□

Evidence assessment: This results from the - undisputed - arguments of the□

complainant in his complaint of August 21, 2018.□

In June 2018, Z*** F***, the father of - at the time the complaint was lodged on□

August 21, 2018 - 12-year-old complainant, in his email inbox ***@***.com□

son (= the complainant) several messages from the respondent. This□

Messages came from the online dating portals www.***frauen.com and□

www.dates***.com of the Respondent. The news, on the other hand, concerned that on that□

Online dating portal www.dates***.com set up profile "****geilab14" and on the□

Online dating portal www.***frauen.com set up profile "bernd****" and included under□

other "contact suggestions". Both profiles were on the email address ***@***.com des□

minor complainant registered.□

Evidence: This results from the credible submissions of the□

Complainant in his complaint of August 21, 2018, submitted by the□

Respondent was also not contested.□

On June 5, 2018, the profile "****geilab14" was published on the online dating portal www.dates***.com□

created with the complainant's email address ***@***.com. On June 29, 2018□

the profile "bernd****" on the online dating portal www.***frauen.com with the email address□

of the complainant ***@***.com.□

Evidence assessment: By email dated July 8, 2018, the complainant requested□

Art. 15 GDPR information from the respondent. The Respondent submitted□

the complainant then a list of those stored about his person□

Information that reveals when the "****geilab14" and "brnd****" profiles appeared on the email□

address of the complainant ***@***.com.□

The underage complainant created the two profiles "****geilab14" and "bernd****",□

who were registered to his email address ***@***.com and to which he□

received notifications from the Respondent on both profiles, not itself.□

Evidence: That the minor complainant did not own the profiles□

"****geilab14" and "bernd****" is based on the one hand on the credible□

Submissions of the legally represented minor complainant who□

express request of the data protection authority in the letter of September 19, 2018□

Answer from October 14, 2018 said no, the two profiles "****geilab14" and "bernd****" with□

to have created his own email address ***@***.com. In addition, the□

Data protection authority in the meantime with further - to the business number D145.050 as well as to□

Business number D124.788 and business number D124.1053 - complaints□

concerning the same Respondent confronted in which the respective complainants□

consistently claim to have received "spam mails" from the Respondent without□

ever to have created a profile on the Respondent's online dating portals. in the□

Overall, it therefore seems plausible to the data protection authority that the e-mail□

Addresses of uninvolved third parties - i.e. people who do not have a profile on the□

online dating portals of the Respondent - for spam mails□

Respondent are used.□

D. In legal terms it follows that:□

The complainant relies - after the data protection authority with□

improvement order dated November 12, 2018 - to a violation of the□

Art. 5, Art. 6 and Art. 32 GDPR (in conjunction with § 1 DSG). Now they are□

Rights of data subjects exhaustively in Chapter III GDPR, namely in Articles 12 to 23 GDPR, enumerated. According to the case law of the data protection authority, a data subject can also to any provision outside of Chapter III GDPR - thus also to Art. 32 GDPR

- based, if this results in a possible violation of the law

Confidentiality according to § 1 Para. 1 DSG (cf. the decision of the

Data Protection Authority of September 13, 2018, DSB-D123.070/0005-DSB/2018, according to which a

Violation of the person responsible against Art. 32 DSGVO to a violation of § 1 Abs. 1 DSG

can lead). Accordingly, there was a violation of the right to

To check secrecy according to § 1 Abs. 1 DSG.

According to § 1 para. 1 DSG everyone has, in particular with regard to the respect of his

Private and family life, right to secrecy of those concerning him

personal data, insofar as there is a legitimate interest in it.

E-mail addresses are personal data in accordance with Art. 4 Z 1 GDPR.

This means that the email address ***@***.com is a personal data of

is a minor complainant.

Unauthorized use of e-mail addresses can, according to the legal opinion of

In any case, the data protection authority violates Art. 5, Art. 6 and Art. 32 GDPR and thus

represent a possible violation of Section 1 (1) DSG:

As can be seen from Art. 32 GDPR, there is an obligation on the part of the person responsible or

of the processor on the security of the processing of personal data. Article 32

GDPR focuses its standard content on “technical and organizational

Measures”. The GDPR uses these terms in numerous other places than

normative starting point, in particular in Article 5 Paragraph 1 Letter f, Article 24 Paragraph 1 Clause 1,

Art. 25 para. 1 and para. 2 sentence 1, Art. 28 para. 1 and Art. 29 para. 1 sentence 2 (...). The topos means everyone

Measures aimed at processing in accordance with the provisions of the GDPR (cf.

see Martini in Paal/Pauly, General Data Protection Regulation [2017], Art. 32 margin no. 28). This

Security can be taken into account the elements specified in paragraph 1 of this provision□

can be guaranteed in several ways. For example, such a□

Data protection security measure in the implementation of a double opt-in procedure□

to obtain a legally compliant consent:□

The “double opt-in procedure” generally involves obtaining the□

Declaration of consent of the participant understood in a two-tier system, the one□

Registration to obtain electronic information, for example on the provider's website□

provides, in a first step, the individual message to the specified email address□

or the specified telephone connection, after which for this address or this□

Subsequent registration has taken place. Only after an on this (individual) mail or the□

answer given in a short message confirming the registration or similar□

Response (e.g. clicking on a link) will be sent advertising messages (cf□

the decision of the Administrative Court of June 26, 2013, ZI. 2012/03/0089 with further references).□

As the Respondent itself submits, it is already a user after the□

Registration by logging into his profiles on the websites www.***frauen.com and□

www.dates***.com possible to use the Respondent's online dating portals. for□

the use of the Respondent's online dating portals, the user must□

Address that he gave when registering, not again by clicking on one□

"Activation links" sent to the e-mail address given during registration□

was sent, confirm.□

The Respondent also does not wait to send "contact suggestions"□

until the user completes his registration via an activation link, which he clicks on - upon registration□

specified – e-mail address has been confirmed again. Much more□

sends the Respondent - even without clicking on the activation link - to the□

E-mail address provided during registration continuously with their notifications.□

As a result, this means that the Respondent did not use a double opt-in procedure□

used.□

It is therefore possible - as in the present case - that a user does not register with his own□

e-mail address, but with the e-mail address of an uninvolved third party on the□

online dating portals of the Respondent can register. As a result, this user□

Use the Respondent's services without ever entering the e-mail account of the□

having to enter the e-mail address provided during registration. The uninvolved third party□

However, whose e-mail address is used for registration on the online dating portals□

received notifications ("contact suggestions") from the respondent□

sent his e-mail address without ever being on the online dating portals of the□

to have registered the complainant.□

That is exactly what happened in the present case: the e-mail address of the minor□

Complainant ***@***.com was used by unknown person(s) to create□

used by two profiles on the Respondent's online dating portals.□

Due to the fact that the Respondent did not have sufficient, Art. 32 DSGVO□

has taken appropriate data security measures, it was possible that□

personal data of the complainant - namely the e-mail address ***@***.com -□

have been unlawfully processed, depriving the complainant of his fundamental right□

Confidentiality according to § 1 Abs. 1 DSG violated.□

To claim for damages□

Regarding the claim for damages raised by the complainant□

data protection authority incompetent. According to § 29 Para. 2 DSG, the local authority is responsible for this□

appeal to the provincial court.□