

GZ: DSB-D123.311/0003-DSB/2019 from 21.2.2019□

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

Addresses (incl. URLs, IP and e-mail addresses), file numbers (and the like), etc.,□

as well as their initials and abbreviations can be used for pseudonymization reasons□

be abbreviated and/or modified. Obvious spelling, grammar and□

Punctuation errors have been corrected.]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint of Mag. Karl□

A*** (complainant) of August 10, 2018 against the Federal Chancellery□

(Respondent) for violation of the right to secrecy and the right to□

Information as follows:□

1. The complaint is partially upheld and it is established that the□

Respondent gives the complainant the right to secrecy□

has violated by having his personal data in the context of the□

Accreditation system for the "Growth in Transition" conference unlawful□

processed.□

2. The complaint is about a violation of the right to information□

rejected.□

Legal bases: §§ 1 paragraphs 1 and 2, 24 paragraphs 1 and 5 of the Data Protection Act (DSG),□

Federal Law Gazette I No. 165/1999 as amended; Article 6 paragraph 1 letters a and c, Article 7, Article 12 paragraphs 1 and 2,

Article 57(1)(f) and Article 77(1) of the General Data Protection Regulation – GDPR, ABI.□

No. L 119 of 05/04/2016, p. 1.□

REASON□

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

1. By submission of August 10, 2018, the complainant essentially submitted that□

the Federal Ministry for Sustainability and Tourism organized in November 2018□
a conference on a specified topic. To attend this conference□
can, but must go through a registration process. This□
comprehensive process violates the GDPR in several respects: The granting□
of information about the data processing by the respondent□
late because the information would only be given at the end of the registration process. to□
At this point in time, the user must already provide personal data twice,□
why Art. 13 GDPR was violated. It is also a violation of Art. 13 Para. 2 GDPR□
recognizing that the persons concerned would not be informed,□
what consequences the non-provision of the requested data or the revocation of the□
have consent. In addition, it is not possible to take part in the conference,□
without consenting to the data processing, because no other form of consent□
is intended. The Respondent therefore violates Art. 7 (1) and Art. 6□
GDPR. In addition, the information provided by the Respondent□
about the data transmissions intransparent and apparently took place without recognizable□
Legal basis (Art. 6, 12 and 13 GDPR).□

2. By letter dated October 8, 2018, the complainant announced that he□
agree to the procedure of the data protection authority, insofar as the□
insufficient information is reprimanded, Art. 13 GDPR asserted and the□
insufficient lawfulness of the processing (Art. 6 and 7 GDPR) as claimed□
To deal with infringement of the right to secrecy (§ 1 DSG).□

3. With a statement of November 9, 2018, the respondent led to the allegation□
the lack of information essentially from that promptly initiated□
be, information on data protection on the first page of the input mask for the□
Creation of the registration account in the course of the accreditation process□
to insert This ensures that when you register for the first time in this system□

Input of data, information about data processing operations. From the

the current text for information on data protection is now clear that

Purpose of data processing registration in the accreditation system and this

A prerequisite for participation in an event. This is Art. 13

Paragraph 2 lit. e GDPR complied.

On the charge that personal data is not based on voluntary consent

would be processed, it should be stated that the processing is required

personal data from organizational, but in particular also from

security police reasons is absolutely necessary. Alternative data collection

such as by e-mail would be subject to the same data protection requirements and could be

not administrate in view of the large number of participants.

The information provided about the data transfer is not

intransparent and would not personal data without recognizable

Legal basis transmitted, since the accreditation system is part of the

security concept of each event and is therefore in close coordination with the

BAT/BMI had been developed. The legal basis for the transfer of the data to the

Security authorities for security screening of event participants and

Conference service providers are regulated in § 55a Para. 1 Z 2 SPG. Such a

Security checks are planned for high-level political events

and would take place on the basis of the requirements of the security authorities.

4. In a letter dated December 27, 2018, the Respondent additionally stated that

which processes personal data in the course of the accreditation process

would have to be. The conference at issue is not an event

been classified at the political level, which is why no security check of the

participants had been carried out.

5. With a statement dated February 15, 2019, the complainant under the

heard from the parties that the Respondent had failed to make transparent□

which data processing was associated with the accreditation process.□

Not only during the registration process, but also now is the respondent□

unwilling to disclose the data processing carried out. Especially stay□

unanswered whether personal data to third parties, in particular to□

security authorities or to "conference organizers". He□

I also fail to explain whether personal data of the□

Complainant have been sent to the Federal Ministry of the Interior and□

The Respondent's information does not contain any information about the duration□

processing in accordance with Article 13(2)(a) GDPR. It is therefore still unclear whether□

the data processed as part of the accreditation from the respondent or□

a recipient of this data would continue to be processed. In addition, there is a lack□

of data processing also on a suitable legal basis. On the one hand, he represents□

Respondent considers that effective consent of the complainant□

passed, on the other hand he referred to the provisions of § 55a SPG. the□

However, the event that is the subject of the proceedings is not an "event at a political level□

level". However, even if safety precautions are taken in favor of one or□

several of the persons named in § 55a para. 1 no. 2 SPG within the framework of the□

event would have been necessary, this encroachment on the fundamental right would no longer apply□

data protection was disproportionate. The Respondent's reference to□

a decision by the Council of Ministers is also irrelevant, since this is not a suitable one□

represent the legal basis. In addition, there is a lack of effective consent,□

because this is a mandatory requirement for participation in the□

the conference that is the subject of the proceedings would have been and is such even in the absence of it□

Transparency of data protection information not effective.□

B. Subject of Complaint□

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

thereby infringed his right pursuant to Art. 13 GDPR by□

Obligation to provide information when collecting personal data from the□

complainant has not adequately complied with and also this deficiency□

has not eliminated during the procedure before the data protection authority.□

In addition, the object of the complaint is to clarify whether the□

Respondent in the processing of the personal data of the□

Complainant has violated his right according to § 1 DSG, since no□

Complainant's consent to data processing as well as none□

The legal basis for this exists.□

C. Findings of Facts□

1. The complainant applied to take part in one organized by the Federal Ministry□

for sustainability and tourism as part of the "Growth and Change" initiative□

hosted conference for the event "Europe's Transformation: Where People□

Matter" on a designated website. As part of the registration process□

he gave his first and last name as well as his e-mail address on this website,□

to receive a "registration link".□

2. He was then sent an e-mail in English to the e-mail address provided□

written message with – in part – the following content:□

"After filling in your name and email address you will receive an email with a registration□

link. Please click on that link to create an account and use your personal e-mail address□

and a password of your choice. After confirming your email address, you will be able to□

enter your information (or that of a third person) into the accreditation system. You will be□

asked to provide a photo and a scan of your passport (...) Please note that the venue is□

only accessible to accredited individuals. (...) Since this event is part of the Austrian□

Presidency of the Council of the European Union Security checks are very high. Alles□

personal information provided during the registration will be processed in accordance with
the Austrian Data Protection Act and General Data Protection Regulation.”

(Translation by the Data Protection Authority:

"After entering your name and email address, you will receive an email with

a registration link. Please click on this link to create an account and

use your personal email address and any password. After

Confirmation of your e-mail address you can enter your data (or that of a third person) in

enter the accreditation system. You will be asked to provide a photo and scan of yours

Passport to be presented (...). Please note that the venue is only for

accredited persons are accessible. (...) Since this event is part of the

Austrian Presidency of the Council of the European Union

the security checks are very high. All specified at registration

personal data are processed in accordance with the Austrian

Data Protection Act and the General Data Protection Regulation processed. (...)"

3. Via the registration link is to create an account by first and last name

and an e-mail address are mandatory. After creating the "Account"

are again the first and last name, gender, nationality, e-mail

address and a job title (delegation/organisation). About it

In addition, under "ID card" is a photo for identification (e.g. passport, driver's license)

and upload a photograph of the registrant's face under "Photo".

4. The registration process is completed by clicking on the “with

submitting these changes I agree that I have read and accepted the privacy policy” and

clicking the "Save" button.

The "privacy policy" (privacy policy) contains the following in English

Information:

"- My data will be used so that I may be accredited to attend events organized by the

Austrian Presidency of the Council of the EU in the second half of 2018. The "controller" as defined in the DSG 2000 and the GDPR is entitled to use my data for this purpose. the "Controller" is also entitled to pass my data to the competent Austrian security authorities for scrutiny.

- I agree to my data being forwarded to the federal ministries responsible for individual events, as well as to conference organizers hired by the ministries to organize the events. The federal ministries and conference organizers are obliged to treat my data with the same diligence as the "controller" defined in the DSG 2000 and the GDPR.

- By providing and transmitting my data, I give my consent in accordance with § 8 para. 1 subpara 2 DSG 2000 and in accordance with Article 6 para 1 (a) GDPR and § 1 para 2 of the Data Protection Amendment Act 2018, that my data may be used and transferred as described above. I am entitled to withdraw my consent at any time and without giving a reason. To do so, I need to inform the Federal Chancellery of Austria of my intention to withdraw my consent.

- I acknowledge that my personal data that are processed for the purpose described above will be deleted immediately following the end of the Austrian Presidency of the Council of the EU. (...)"

(Translation by the Data Protection Authority:

"- My data will be used to register for events organized by the Austrian EU

Council Presidency to be accredited in the second half of 2018. the

"Responsible" within the meaning of the DSG 2000 and the DSGVO is entitled to my data to use for this purpose. The "responsible" is also entitled to my data to be passed on to the responsible Austrian security authorities for control.

- I consent to my data being forwarded to those for individual events responsible federal ministries as well as to those responsible for the organization of the ministries Events commissioned conference organizers are passed on. the

Federal ministries and conference organizers are obliged to keep my data with the

to be treated with the same care as that defined in DSG 2000 and GDPR

"Responsible".

- With the provision and transmission of my data, I give my consent

in accordance with Section 8 (1) Z 2 DSG 2000 and in accordance with Section 6 (1) (a) GDPR and Section 1 (2) DSG

2018 that my data will be used and shared as described above

may. I am entitled to withdraw my consent at any time and without giving reasons

withdraw. For this I have to inform the Austrian Federal Chancellery about my intention

inform you to withdraw my consent.

- I acknowledge that my personal data are necessary for the purposes described above

purpose are processed immediately after the expiry of the Austrian EU

Council Presidency will be deleted.")

In addition, the data protection declaration refers to the rights of those affected

people and the right to lodge a complaint with the data protection authority. the

The address of the person responsible and the data protection officer are also given

listed.

5. Information about data processing was only provided at the end of the

Registration process after the complainant at that time already

had to provide personal data twice.

6. The complainant has successfully pleaded for the procedural

Conference accredited and received a confirmation email.

7. Registration in the accreditation system is not possible without providing the data

possible. Another form of "accreditation" for the subject of the proceedings

Conference was not possible.

8. The data that must be requested in the accreditation system for persons who

The data of the category: Pre and

Surnames, date of birth, gender, nationality, delegation or ☐

Organization name, email address, photo for the badge and a valid one ☐

identification document. For persons who do not have to undergo a security check, ☐

Category data is sufficient: first and last name, e-mail address, photo and scan ☐

a valid identification document. ☐

9. The present conference was an event at which ☐

no security check of the participants was to be carried out. ☐

10. In the accreditation system were made in relation to the procedural ☐

Conference the data of the category name and surname, date of birth, gender, ☐

Nationality, name of delegation or organization, e-mail address, photo for the badge ☐

and a valid ID document. ☐

Evidence assessment: The findings are based on consistent submissions ☐

of the Complainant and the Respondent in their letters to the ☐

Data Protection Authority and the attached documents. Determining when the ☐

Information about the data processing was issued is based on the undisputed ☐

remaining submissions of the complainant. In addition, this was before ☐

Notification of the data protection declaration already an e-mail regarding the registration ☐

sent. The determination regarding the form of registration for the conference results ☐

from the e-mail correspondence with the complainant ☐

Those responsible and from the statement of the respondent dated ☐

November 9, 2018. The determinations as to which categories of data in the course of the ☐

were queried at the conference that is the subject of the proceedings result from the ☐

Respondent's statement of December 27, 2018. ☐

D. In legal terms it follows that: ☐

Regarding the information obligation according to Art. 13 GDPR ☐

In accordance with Art. 12 Para. 1 GDPR, the person responsible must take appropriate measures ☐

to provide the data subject with all the information pursuant to art. 13 and 14 and all

Communications pursuant to Articles 15 to 22 and Article 34 relating to processing,

in a concise, transparent, intelligible and easily accessible form in a clear and

conveyed in plain language. In principle, this regulation leaves open whether and

the extent to which information needs to be translated into the respective national language. in the

With regard to the requirement of comprehensibility for the person concerned, the additional

is also emphasized in recital 58, as well as the market location principle of Art. 3

Para. 1 GDPR, however, it can be assumed that the information is basically in the

respective national language (cf. Ehmann/Selmayr, DS-GVO,

Commentary, Art 12, para. 19 and Paal/Pauly, General Data Protection Regulation, Art. 12,

para. 35).

In the present case, the fact that the information was sent to the

Complainant only in English - and not also in German - but took place

not to go into further detail because the event that is the subject of the proceedings is taking place at a

addressed English-speaking audiences and the complainant has not submitted that

not being proficient in the English language.

Art. 13 GDPR is the basis for the rights of those affected under Chapter III (Rights of

data subject) DSGVO to understand, since the data subject initially at all

learns that data is being processed by a specific person in charge about them

will. Recital 60 also refers to the principle of fair and

transparent processing that enables the data subject to

To be informed of the existence and purpose of the processing.

The importance of information is also emphasized by the ECJ in its case law

(For the legal situation according to Directive 95/46/EC, see the judgment of October 1, 2015,

C-201/14).

Art. 13 Para. 1 GDPR defines the time at which information is provided as the collection of the

dates fixed. The time of the survey can also be when the person concerned

knowingly gives data to the person responsible, for example by filling out an online

form (cf. Ehmann/Selmayr, loc. cit., Art. 13, para. 11).

For the content of the information, see paragraphs 1 and 2 of the relevant provision

six categories of information. The information from paragraph 2 also includes for

the persons responsible have no right to choose and are therefore always available to the data subject

to make it available (cf. Art. 29 Data Protection Group, Guidelines on transparency under

Regulation 2016/679, last updated 11 April 2018; see beyond

Ehmann/Selmayr, loc. cit., Art. 13, para. 29ff).

In the case, the personal data of the complainant were

Respondent raised when completing the online accreditation process. to

At this point in time, the complainant would have all the rights specified in Art. 13 (1) and (2) GDPR

information mentioned must be provided. The respondent came

Information obligation insofar as the provision of information about the

Data processing only took place at the end of the registration process and

Complainant at that time already twice personal data

had to specify.

The data protection declaration of the respondent included, like the findings

can be taken from:

- the information on the name and contact details of the person responsible

(Art. 13 para. 1 lit. a)

- the contact details of the data protection officer (paragraph 1 lit. b),

- the purposes for which the personal data are to be processed,

as well as the legal basis for the processing (para. 1 lit. c: accreditation and

Participation in the conference that is the subject of the proceedings and consent

pursuant to Article 6 Paragraph 1 Letter a),

- the recipients or categories of recipients of the personal data□

(Paragraph 1 lit. e: Austrian security authorities, federal ministries,□
conference organizers).□

Since the data processing according to the information in the data protection declaration does not apply to□

Art. 6 Para. 1 lit. f DSGVO based and an international data transfer, neither claimed□

still emerged in the process, the information could be used in accordance with Art. 13 Para. 1□

lit. d and f GDPR permissibly omitted.□

According to Art. 13 Para. 2 leg. cit. were set out in the privacy policy below□

Information about data processing provided:□

- the duration for which the personal data is stored (lit. a: end□

Presidency of the Council of the European Union).□

-□

Information about the rights of those affected (lit. b: at the end of the data protection declaration□

under "your rights"),□

-□

Information about the right of withdrawal (lit. c),□

- Right of appeal to the data protection authority (lit. d: at the end of the□

Data protection declaration under "your rights"),□

After the proceedings before the data protection authority neither claimed nor□

it has emerged that automated decision-making or profiling in□

As part of the data processing is carried out, relevant information in the□

Data protection declaration (paragraph 2 lit. f) omitted.□

In this respect, the Respondent came in his privacy policy□

Information obligation according to Art. 13 Para. 2 lit. e GDPR not according to: This is□

however, information relating to the lawfulness of the processing in Art. 6□

paragraph 1. However, according to Art. 13 (1) lit. c□

be clarified so that the list in paragraph 2 lit. e leg. cit. as additional

Information only the possible consequences of not providing the

contains personal data (cf. e.g. Ehmann/Selmayr, loc. cit., Art. 13, para. 62).

This information was provided by the Respondent in a statement dated November 9th

2018, in which it states "that without the provision of the

Data no registration in the accreditation system is possible, which in turn is the

The prerequisite for participation in an event is."

The Austrian legislator has the responsible person in § 24 Abs. 6 DSG

Possibility created, alleged legal violations until the end of the

to eliminate proceedings before the data protection authority.

As a result, the respondent has grown out of Art. 13 GDPR

Information obligation therefore complied with. The aim of the Art. 13 leg. cit. supported

Complaints procedure is to enable the data subject to pursue their rights

of the GDPR and the DSG. From Art. 77 GDPR (in conjunction with Section 24 DSG).

only the right to lodge a complaint with the supervisory authority can be derived. A right

upon finding that the information was provided too late, this provision

however, cannot be removed (cf. on the comparable legal situation according to

the DSG 2000 the finding of the Administrative Court of September 27, 2007,

ZI. 2006/06/0330, with further references).

Against this background, the complaint in relation to Art. 13 GDPR was not

entitled, which is why it had to be rejected in accordance with Section 24 (5) DSG.

For violation of the right to secrecy according to § 1 DSG

A data subject can also rely on any provision of the GDPR outside of the

Support data subject rights according to Chapter III, if this results in a

possible violation of the right to secrecy according to § 1 Para. 1 DSG

(cf. DSB of December 13, 2018, DSB-D123.073/0007-DSB/2018). in the

In the present case, the complainant essentially submits that□

Data processing contradicts Art. 6 and 7 GDPR, since no voluntary consent to□

Data processing is present and this also on no effective legal basis□

be justified.□

As can be seen from the data protection declaration of the respondent, the□

Consent of the data subject is the legal basis for the□

Procedural data processing (cf. Art. 6 Para. 1 lit. a GDPR). According to□

According to § 1 paragraph 2 DSG, the voluntariness when submitting the declaration of consent is one□

Basic requirement for the legally valid intervention in the fundamental right to data protection.□

The requirements of Art. 7 GDPR apply to all consent-based□

data processing to be taken into account.□

The legal effectiveness of a data protection consent depends, among other things, on□

that before the start of the processing of the personal data for which the□

consent is required, is obtained by the person responsible (see, inter alia, Knyrim,□

DatKomm, Art. 7, margin no. 16, with further reference). So that the person concerned can face the consequences of his or her□

can foresee, the consent must be given in an informed manner (cf. Art. 4 Z 11 leg. cit.). out of it□

follows that the person responsible comprehensively informs the consenting party before the consent□

to clarify this and its effects. The content of the information must be□

Orientate on a case-by-case basis and provide the user with all relevant information in this regard□

reveal. In terms of content, the person responsible can generally refer to the information set out in Art. 12 et seq.□

the specifications of the information obligations mentioned above. especially the□

Information requirements from Art. 13, 14 DSGVO are for a sufficiently transparent□

information for the person concerned (cf. Ehmann/Selmayr, loc. cit., Art. 7,□

para. 40).□

The GDPR itself does not contain any legal definition of consent with regard to consent□

term of voluntariness. In recitals 42 and 43 of the GDPR and Art. 7□

Paragraph 4 leg. cit. only negative demarcation features can be found in this regard.□

For example, a clear power imbalance is suspected when the□

responsible is an authority. In addition, the existence of a□

to examine freedom of choice, whereby this is then to be denied if in consideration of all□

Circumstances of the individual case it cannot be assumed that the consent was given voluntarily□

would. Did the person concerned have no real choice, otherwise he would be disadvantaged□

feared, consent does not constitute a valid basis for data processing□

A freedom of choice is not to be assumed, for example, if different□

Processing operations only the possibility of a general granting of consent and□

There is no possibility of separate consent, although this is in individual cases□

would be appropriate.□

It is undisputed that the complainant did not know all the circumstances in the context of the matter□

his consent. Even before you give your express consent when you click on it□

of the data protection declaration - as described above in the context of the information obligation□

executed – personal data of the complainant processed. Also before□

Furthermore, the complainant was not complete when granting consent□

informed about the data processing according to Art. 13 GDPR. Especially at the□

First entry of the personal data required to send the registration link□

have led to the complainant at this point in time the scope and the□

not be aware of the consequences of his (possibly implied) consent.□

The complainant was also therefore not aware of all the data processing□

necessary circumstances, since only in the ongoing proceedings in the opinion of the□

Respondent of December 27, 2018 it came out that the□

The conference that is the subject of the proceedings is an event at which the□

Participants are not subject to a security check. Consequently□

the complainant was given no freedom of choice, only those data ready to□

that are absolutely necessary for participation in this event, but

had to transmit all the data that people who had to provide themselves

had to undergo a security check. In addition, the voluntary

the consent in the present case are also doubted because between

there is a clear imbalance between the consenting party and the respondent, since

the respondent is the Federal Chancellery (and thus the

Auxiliary apparatus of an authority) acts.

In an overall view, there is no valid consent of the individual case

complainant, why the respondent the personal data

of the complainant is not lawfully processed in accordance with Article 6(1)(a) GDPR

has.

Alternatively, the Respondent brings in the statements of November 9 and

of December 27, 2018 also stipulates that the processing of

personal data of the conference participants from organizational, in particular

security police reasons was absolutely necessary. As a legal basis

of the data transmission, he also carried out a decision of the Council of Ministers as well as § 55a

Para. 1 Z 2 SPG.

If the respondent claims that the processing is lawful,

because they are necessary for compliance with a legal obligation to which the person responsible is subject,

is necessary (see: security police; Art. 6 para. 1 lit. c GDPR), it follows

already from the conditions of necessity that the Respondent relies on

limit the necessary extent required of him by the legal obligation

and must not process the data beyond the required purpose and scope

may (cf. Ehmann/Selmayr, loc. cit., Art. 6, para. 17). In the present case, the

Respondent processed more personal data than for the

conference that is the subject of the proceedings would have been necessary. in the

Accreditation system, no distinction was made whether it was events□

with or without a security clearance. Regardless of that□

Respondent the lawfulness of the data processing therefore primarily on the□

based on the complainant's consent could also result from any□

legal basis for authorization does not mean that the data processing is lawful□

be derived.□

As a result, the complainant was found due to the unlawful processing□

his personal data in his right to secrecy according to § 1 paragraph 2□

DSG violated, which is why it had to be decided according to the verdict.□