

GZ: 2021-0.119.956 from February 22, 2021 (case number: DSB-D124.1965)

[Editor's note: The Respondent's name will appear in this notice

played back. The data subject is a corporation under public law,

whose name can also be derived from a quoted legal provision (the

The Vienna Hospitals Act of 1987 only applies in the state of Vienna, which in turn only consists of one

single municipality, the Respondent). A meaningful and meaningful one

Pseudonymisation of the Respondent's name in this pursuant to Section 23 (2) DSG

The decision to be published was therefore not possible.]

NOTICE

S P R U C H

The data protection authority decides on the data protection complaint of mj. Corina A***

(complainant), represented by the guardian Dr. Gustav A***, dated

December 30, 2019 against the City of Vienna (Respondent), represented by the

Magistrate of the City of Vienna, due to violation of the right to information as follows:

1. The complaint is partially upheld and it is found that the

Respondent gives the complainant the right to information

violated by providing the complainant with incomplete information in

reference to her medical history.

2. The Respondent is instructed, within a period of four weeks,

the complainant's personal data in her medical history

to be fully informed.

3. The complainant's request for a finding that the

Respondent requested submission of a copy of ID was unlawful

rejected.

4. The appellant's application for a finding that the

Respondent would have been reasonable to provide registration information itself

to be obtained is rejected.

Legal basis: Article 5 paragraph 1 letter e, Article 9, Article 15 paragraph 1, paragraph 2 and paragraph 3, Article 51 paragraph 1,

Article 57 paragraph 1 letter f and Article 77 paragraph 1 of Regulation (EU) 2016/679 (data protection

Basic Regulation, hereinafter: GDPR), OJ No. L 119 of 4.5.2016 p. 1; §§ 1, § 18

Paragraph 1 and Section 24 Paragraph 1 and Paragraph 5 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999

idgF; § 17a paragraph 2 lit. g Vienna Hospitals Act 1987 (Wr. KAG), LGBl. No. 19/1988

idgF

A. Submissions of the parties and course of the proceedings

REASON

1. With the complaint initiating the procedure dated December 30, 2019

led the

Complainant violated the Respondent's right to information

by the Respondent's request for information of November 14

was not fully complied with in 2019. The information provided by the Respondent dated

December 12, 2019 did not have all the documents on the treatment of

Complainant in hospital N*** in 2019. You have according to Art. 15

Para. 3 GDPR the right to receive a copy of the stored data. recital 63

have

here

explicit

health-related data

(patient files, diagnoses,

investigation results

etc.) included. About it

out

asked

the

Appellant to find that the requested by the Respondent

Submission of a copy of your ID, even though it already has a qualified electronic signature

had been submitted was not legal. She also asked for a statement that it

the Respondent had been reasonable, a further additional registration information

to be obtained from MA 62.

2. With a submission dated March 27, 2020, the Respondent commented and led to the

complaint from that

contained in the information of December 12, 2019

personal data are both information about the complainant

relevant processed personal data (Art. 15 Para. 1 DSGVO), as well as a

Copy of the personal data that are the subject of the processing, within the meaning of Art

Art. 15 Para. 3 GDPR. The right to information according to Art. 15 Para. 3 GDPR only includes that

Right to receive a copy of the data stored about the data subject

personal data, thus a list of these, but this is not a claim to

Transmission of entire files or file copies. Accordingly have the

Complainant has no right under the GDPR to "see all patient files [...]

in full as a copy".

In addition, in the case of the patient's file, there is the possibility of inspecting the

medical history or to have a copy of the medical history made

Reimbursement of costs according to § 17a paragraph 2 lit. g Wr. KAG. The right to information according to Art. 15 GDPR

is also based on the principle *lex specialis derogat legi generali* of more specific rights

from the area of information but also inspection rights of the Wr. KAG displaced.

The area of hospital law at hand here, namely the perception of

Patients' rights have a European legal basis in Directive 2011/24/EU

(see also Füzsi in Aigner/Kletečka/Kletečka-Pulker/Memmer, Handbuch Medizinrecht

(2019) Ch. IV.1.10), which is why another legal act at the same level as the GDPR

have passed. The peculiarity lay only in the fact that the directive as a rule

is not directly applicable but needs to be implemented by national law.

However, this has nothing to do with the equal status of EU regulation and EU directive (or

to the national regulations implementing the EU directive).

Insofar as the complaint (implicitly) related to patient files in analog form,

it should be noted that reference files do not qualify as a file system within the meaning of Art. 4 Z 6 DSGVO

are, which is why the GDPR (and consequently your right to information) are not in this regard

be applicable.

For the requested determination of whether the request for a copy of an ID card was lawful,

stated the respondent, since the complainant required information within the meaning of the GDPR

been granted, only this could be the subject of the complaint and not the modalities.

3. With a submission dated June 30, 2020, the complainant requested the continuation of the

procedure and summarized that she was of the opinion that the provisions of the GDPR

are, as secondary Union law, of a higher rank in the hierarchy of norms than that

Wr. KAG. In addition, she assumes that all files, if these

are not recorded electronically anyway, are structured and based on legal obligations

must be sorted, which means that the GDPR continues to apply to these documents

may be.

4. With a submission of February 2021, the Respondent stated that

the

available in the records

information was archived digitally.

Accordingly, a direct applicability of the GDPR as (partly) automated

given data processing.

5. In its submission of February 16, 2021, the complainant essentially repeated their previous statements.

B. Subject of Complaint

The subject of the complaint is whether the respondent is the complainant thereby violated the right to information by not providing complete information about provided their health-related data.

Furthermore, the requests made by the complainant with regard to the exercise the right to information.

C. Findings of Facts

1. With an application dated November 14, 2019, the complainant's guardian submitted by e-mail the request for information about the personal data of the

Complainant: (formatting not reproduced 1:1)

dr Gustav A*** as

as the guardian of Corina A***

Email: ds***@***.at

L***strasse 5*

****N***

Magistrate of the City of Vienna

Data Protection Officer <***datenschutzbeauftragter@wien.gv.at >

N***, on 11/14/2019

Subject: Request for information in accordance with Art. 15 GDPR

Ladies and Gentlemen!

As legal guardian according to § 177 ABGB of my daughter

Corina A***, social security number 3**5 17**06

I hereby provide in accordance with § 158 ABGB and Art. 15 General Data Protection Regulation

(Regulation (EU) 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,

on the free movement of data and on the repeal of Directive 95/46/EC, GDPR).

Request for information about my daughter's personal data

connection with her treatment in the hospital N***, I***gasse *7, 1**0 Vienna im

year 2019

a. Please provide me with a copy of all of the above, free of charge

stored personal data in a common electronic format

available.

You are requested to provide information on all the data that is in all

files are located, and also about key, search and reference terms with the

personal data can be linked directly or indirectly (Art

GDPR).

This includes in particular, but not only: All data from the patient file

such as diagnoses, notes, test results (including all

imaging procedures such as X-rays or MRI), surgical protocols, e-journal entries,

Findings of the attending physicians, information on treatments or interventions (see

Recital 63 GDPR).

b. If the data is processed in accordance with Art. 28 GDPR, I request the additional

Specification of the name and address of your processor.

c. Operate processing with pseudonymised data or others

Data processing without personal identification (Art 11 GDPR)? If yes,

which?

i.e. Please tell me the recipients or categories of recipients who receive my data

have already received or will receive in the future.

If the data was not collected directly, please send me all available

provide information about the origin of the data.

e.

The sending of the data or the information for their retrieval via remote access

a secure system please send to my email address: ds***@***.at.

According to Art. 12 Para. 3 GDPR, information must be provided immediately,

but at the latest within one month. Should I not receive any information within this period

received from you, I will contact the responsible supervisory authority. If

If you don't think you have to respond to the application, you have me

no later than one month after receipt of the request about the reasons for it and

about the possibility of lodging a complaint with a supervisory authority.

To confirm my identity, this document is accompanied by a qualified

Electronic signature according to Art. 25 Para. 2 of the EU Regulation No. 910/2014 (eIDAS)

provided, with which a clear identification of my person and about you

available insurance data also a clear connection to my with me

co-insured daughter can be produced.

You will also find an image of my daughter's eCard enclosed.

If, contrary to expectations, you consider this to be insufficient, there is the possibility

the authenticity of this request over that noted in your patient file and thus you

Known phone number to confirm.

Best regards

dr Gustave A***

(as the guardian of Corina A***)

Attachment: Figure eCard

[Editor's note: The graphic files of the figures (front and back)

of the eCard and the digital signature were removed because they cannot be displayed in the RIS.]

2. On November 19, 2019, the Respondent replied and requested dated

A current excerpt from the register of residents for the complainant's guardians

Proof of authorization to represent and an official photo ID for identification.

3. On November 20, 2019, the complainant received the request regarding the

Registration slip, however, complained about the unjustified request for a copy of the ID card

Guardian, as there is a qualified electronic signature.

4. On November 26, 2019, the complainant's guardian came to the

ID card copy requirements.

5. On December 12, 2019, the Respondent sent the Appellant the following

Information: (excerpt, formatting not reproduced 1:1)

Mr

dr Gustave A***

Magistrate of the City of Vienna

S***gasse *5

**** Vienna

By email: ds***@***.at

Department D*** -3****

Request for information in accordance with Article 15 GDPR

phone

+4314000***375

post@***wien.gv.at

vienna.gv.at

Vienna, December 12, 2019

Dear Doctor. A***,

With an e-mail dated November 14th, 2019 you have sent the data protection officer for the Vienna City Administration

Request for information in accordance with Art. 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council

of

April 27, 2016 on the protection of natural persons with regard to the processing of personal data, on the free movement of data

and aimed at repealing Directive 95/46/EC (GDPR).

The content of your request was information about your underage daughter Corina A*** in the hospital N*** in to obtain data processed in connection with their treatment in 2019.

Department D*** Data Protection*** is responsible for coordination according to the business division of the City of Vienna City Council

responsible for answering requests for information according to Art. 15 DSGVO, which is why your request is forwarded to them

became.

As no copy of proof of identity was attached to this request and thus the identity of the applicant was not ascertainable, you were requested by letter from Department D***Privacy*** dated November 19, 2019 to provide proof of your identity. You were also asked to provide a current proof of your power of representation

You and your underage daughter Corina A*** to submit an extract from the register of residents.

You complied with this request by email dated November 26, 2019 or November 28, 2019. Editing your

A request for information was only possible from this point in time, the deadline according to Art. 12 Para. 3 was up to this point in time

inhibited.

At the outset, it is stated that the right to information pursuant to Art. 2 Para. 1 GDPR only applies to the full or partial automated processing of personal data and for the non-automated processing of personal data

Data stored in a file system

Health monitoring at work (VGÜ) Federal Law Gazette II No. 27/1997;

Federal law on the protection of personal liberty during the stay in

Homes and other nursing and care facilities (Home Residence Act - HeimAufG), Federal Law Gazette I No. 11/2004 as amended;

Accommodation of the mentally ill in hospitals (Housing Act - UbG), BGBl. No. 155/1990 as amended.

I) The following data of your daughter appear to be part of the patient administration

in the processing on:

Overview master data:

Number of patients: 36**19*

Surname: A***

First name: Corina

Salutation: Mrs

Date of birth: 17.**.06

Gender Female

Nationality: Austria

pupil

Overview addresses:

Address type: primary residence

Country: Austria

ZIP: **** N***

Street: L ***straße 5*

Telephone: 06**38562***

Other patient data:

Marital status Unmarried

Language: German

Place of birth: Vienna

VSNR: 3**5 17**06

Document type: father's driver's license

Document No: 07*****34

Relatives: Gustav A***

Insurance group: 0*.employed/unemployed/self-employed/asylum/refugee

Type of insurance (A,S): Social security

Insurance data:

KTR (=cost bearer): 7*** insurance company for ***

Membership type: co-insured

Profession:

KTR for special class/multiple bed: ***insurance (additional insurance)

Membership Type: Self-Insured

Purpose of processing:

Administrative recording of patient data for clear identification of those to be treated

Person for medical care and for billing according to § 17 para. 1 Wiener

Hospitals Act 1987

Category of processed data:

Administrative patient data

Duration of storage:

At least 10 years for data from outpatient care according to § 17 Para. 2 Wiener

Hospitals Act 1987.

After completion of the medical history at least 30 years for data from inpatients

Stays according to § 17 paragraph 2 Vienna Hospitals Act 1987.

Up to 30 years according to § 16a Vienna Hospitals Act 1987.

The patient's master data is the link to the medical documents of all

further stays of a patient.

Origin of the data:

E-card, information from the patient or relatives

II) Information on outpatient visits and inpatient hospital stays (sorted in chronological ascending order)

Her daughter:

[Editor's note: The graphic file of the figure over the periods of the

inpatient and outpatient stays in the hospital with the naming of the stations has been removed,

since it cannot be represented in the RIS.]

III) Recipients of the data from I) and II):

For the determination of the insurance entitlement (outpatient and inpatient) were for the

Treatments in 2019 the insurance number and e-card number or policy number

(in the case of an inpatient stay) announced to the insurance company for *** and the *** insurance company.

IV) Survey result from the clinics and institutes:

In the medical departments, the master data (such as name, date of birth, gender, address,

Marital status, insurance carrier) and the following specific data are documented:

1) N*** Department of Orthopedics and Trauma Surgery

Visits/stays on:

ambulance

Date

Department of Pediatric Orthopaedics

Department of Pediatric Orthopaedics

Department of Pediatric Orthopaedics

Time

0*.0*.2019

0*.0*.2019

1*.0*.2019

08:30:52

08:29:47

07:43:49

Inpatient stay:

Child ward V*: inpatient stay from **.**.2019 to **.**.2019

2019****

Outpatient documents:

document date

eJournal

Accident/orthopaedics - OP reservation 2019****

eJournal 2019****

eJournal 2019****

Cash register prescription 2019****

eJournal 2019****

eJournal 2019****

eJournal 2019****

Documents for inpatient stay:

document date

External laboratory report (from patient 1*. **.2019

brought)

External OP release (from patient

brought 2*. **.2019

Recording sheet 2*. **.2019

Tissue samples, information on storage

preservation, analysis and further use

of tissue - cell and other samples 2*. **.2019

Information for patients

regarding declaration of consent 2*. **.2019

Acceptance confirmation patient information

Information folder including information on

State of health 2*. **.2019

OP lapel 2*. **.2019

Minutes of special class 2*.**.2019

Surgical Safety Checklist Simplified 2*.**.2019

Preoperative Checklist 2*.**.2019

Patient information anesthesia 2*.**.2019

OP report 2*.**.2019

Implant 2*.**.2019

Radiometer ABL 800 Flex (blood analysis) 2*.**.2019

Nursing process 2*.**.2019

Cash register prescription 3*.**.2019

documentation of bruised wounds

healing, drainage, catheter (PLL30) 3*.**.2019

documentation of bruised wounds

healing, drainage, catheter (PLL30) 2*.**.2019 to 2*.**.2019

Fever curve 2*.**.2019 to 1*.**.2019

Progress documentation pain 2*.**.2019 to 2*.**.2019

Progress documentation pain 2*.**.2019 to 1*.**.2019

Origin of the data:

Information provided by you or your relatives

Recipient of the data:

No recipients

Commissioning of processors:

No processors

2) N*** Department of Physical Medicine, Rehabilitation and Occupational Medicine

Visits/stays on:

Ambulance date time

Physical therapies LS 5L 2*.**.2019 10:49:00

Konsilische Physikalische Med. 2*.2019 13:35:36

Physical therapies LS 5L 2*.2019 13:36:00

Physical therapies LS 5L 3*.2019 12:44:000

Konsile Physikalische Med 3*.2019 07:23:00

Physical therapies LS 5L 0*.2019 10:02:00

6. In the ongoing proceedings before the data protection authority, the respondent submitted on

February 3, 2021 the following information (formatting not reproduced 1:1):

With regard to the information on which the complaint is based, it is reported that the following existing documents were erroneously

were not listed:

-

-

Inpatient letter 0*.2019

*** Outpatient questionnaire 2*.2019

Evidence assessment: Evidence on the facts that were not in dispute were included through the submissions of the parties, which are available in the file.

D. In legal terms it follows that:

The following is to be noted at the outset:

The complaint is directed against the "City of Vienna, Department D***", but means obviously the Viennese health association as the operator of the N*** hospital in the city Vienna. The Vienna Health Association is a dependent company of the City of Vienna.

The Magistrate (Department D***) represents the City of Vienna in matters relating to the data protection, in particular before the data protection authority.

It follows from this that the Respondent is the "City of Vienna, represented by the Municipal Council of the City of Vienna". The blurring of the label of the original

Respondent is not to be blamed on the complainant (cf. also

the decision of the Federal Administrative Court of May 27, 2020, GZ W214 2228346-1 re.

"Viennese living").

Also

is input

to state that it is the objective to

Complainant processed health data according to Art. 4 Z 15 in conjunction with Art. 9

Para. 1 GDPR acts because this data (exclusively) in the context of the medical history

of the complainant are processed (see also the decision of

November 19, 2020, GZ: 2020-0743659).

1. 2. Regarding the question about Directive 2011/24/EU as *lex specialis*

As data protection information, the complainant requests the (free)

Provision of information that the Respondent has, specifically the content

the medical history.

The Respondent argued that the right to information under Art. 15 GDPR was after the

Principle *lex specialis derogat legi generali* of more specific rights in the area of

Information but also right of inspection of the Wr. KAG been supplanted, which one

chargeable

for the patient records

foresee. The

present area of

Hospital law, namely the perception of patients' rights, has one

European legal basis in Directive 2011/24/EU.

This objection does not work because according to Art. 2 lit. c of this directive

Directive 95/46/EG remains unaffected. According to Art. 94 Para. 2 GDPR, references to the

Directive 95/46/EC as references to the GDPR.

For this reason alone it cannot be said that Directive 2011/24/EU

DSGVO superseded according to the principle *lex specialis derogat legi generali*.

Apart from that, Art. 4 Para. 2 lit. f of Directive 2011/24/EU provides that the

Member State of treatment the right of treated patients to draw up a

written or electronic patient file about the treatment as well as - according to the and

subject to national measures implementing Union rules on protection

personal data, in particular the directives 95/46/EG and 2002/58/EG

access to at least one copy of this file.

Also according to this provision, which expressly regulates access to patient files

the requirements of the GDPR are significant.

Directive 2011/24/EU was amended by LGBI. No. 33/2014 in Section 17a (2) lit

Wr. CISA implemented.

Art. 15 GDPR does not recognize any provision equivalent to Section 26 (6) DSG 2000, according to which

the request for information under data protection law is only subsidiary to other rights of inspection

can be exercised. Rather, there is a fundamental right to information in accordance with

Art. 15 GDPR, insofar as there is no permissible restriction under Art. 23 GDPR. Is applicable

On the other hand, a more specific substantive regulation under Union law is governed by the

Principle *lex specialis derogat legis generalis*. The GDPR cannot do that

be interpreted as conclusively regulating the rights of those affected. Rather regulates the

GDPR, according to its scope, the rights of data subjects in general

way, although it is not excluded that more specific ones can be found in other legal acts of the Union

Provisions are made for the rights of those affected (cf. the decision of June 21

2018, GZ: DSB-D122.844/0006-DSB/2018).

Since in the present case Section 17a (2) lit. g Wr. KAG (which in implementation of the guideline

2011/24/EU was issued) no special right to information (in relation to

GDPR) standardized without reimbursement of costs, can thereby also invoke the right to general

data protection information about your own data are not restricted. On the contrary, the

The aforementioned directive refers – as explained – to Directive 95/46/EC (now GDPR),

which is decisive for the processing of personal data.

It follows from all of the above that Section 17a (2) lit. g Wr. KAG does not derogate from Art. 15 GDPR.

2. Re points 1 and 2

a) Basic information on Art. 15 GDPR

According to Art. 15 Para. 1 GDPR, the person concerned has the right from the person responsible

to request confirmation as to whether personal data concerning you

are processed and, if this is the case, information about this personal data

to receive data and to be entitled to the information pursuant to lit. a to h leg. cit. According to

Art. 15 para. 3 GDPR, the person responsible has a copy of the personal data that

The subject of the processing is to be made available to the data subject. Provides the

affected person submits the application electronically, the information is in a common format

electronic format, unless otherwise specified.

In principle, the Respondent has the personal data processed by her

to disclose the complainant's data, unless there are other exceptions to the

There is a right to information.

b.) Right to a copy (Article 15 (3) GDPR)

The right to a data copy according to Art. 15 Para. 3 GDPR exists independently in addition to the

Right to information about the content of the processed data in accordance with paragraph 1 leg. cit. (see.

Franck in Gola [ed.], General Data Protection Regulation² Art 15 Rz 27).

The complainant believes that information about the contents of the

Patient files, or information about diagnoses, examination results, findings of the

treating physicians and information on treatments or interventions, so essentially

receive a copy of the medical history, about the assertion of the right of access

to be able to

The data protection authority, with reference to the recital 63 and the judgment of the ECJ of

17 July 2014, YS and others, C-141/12 and C-372/12, already stated that Art. 15

Para. 3 GDPR no right to a copy of documents that

contain personal data of an information seeker. under appeal

According to Art. 15 Para. 3 GDPR, it is therefore not possible to authorize the issuance of entire documents

request, personal data of an information seeker may also appear in it

(cf. in this sense also the judgment of the Vienna Commercial Court of October 7, 2019,

GZ 18 C 263/19m regarding the issuance of an insurance policy). Art. 15 Para. 3 GDPR

only standardizes the right to obtain a "copy of the personal data that

are the subject of the processing" (see also the notification of August 10, 2020,

GZ: 2020-0.204.456 mwN).

Contrary to the complainant's view, recital 63 not derive,

that there is a right to the (free) publication of entire documents: there is namely

of "data in their medical records that contains information such as diagnoses,

Examination results, findings of the attending physicians and information on treatments

or interventions" and not "data from patient files".

From all this it can be deduced that there is no right to copies of the entire patient file after the

GDPR exists, but by means of a request for information, the information of the

recital 63 2nd sentence GDPR can be requested in the patient files.

The entire information provided by the Respondent contained, apart from the names of

Files/findings and therapies with date, at least no complete information on the

health-related data of the complainant

in the patient records, like

for example diagnoses, examination results, findings of the attending physicians.

In view of the above, it is therefore not important to

to reproduce documents and make them available free of charge; Article 15 GDPR

nevertheless guarantees to receive information about this data, be it in the form of a copy

(facsimile) or be it in the form of a description of the content or context in which personal data are processed.

In any case, the information must be provided precisely in such a way that the person concerned can, on the basis of this Information assert their rights to deletion, correction and, if necessary, objection (cf. also on Directive 95/46/EC the judgment of the ECJ of May 7, 2009, C-553/07, margin nos. 49 and 51).

As a result, the Respondent has in any case inadequately responded to the application information and she was to be instructed to give the complainant a DSGVO corresponding, complete information and the health-related Data in the patient files iSd. recital 63 2nd sentence GDPR to the complainant provide information.

Point 2 is based on Article 58 (2) (c) GDPR. The restriction according to § 24 Para. 5 DSG must be disregarded because it is not covered by Art. 58 GDPR (cf. BVwG of May 28, 2020, GZ W211 221 6385-1).

Therefore, the decision had to be made accordingly.

Regarding point 3 and 4:

The complainant lodged a complaint because of insufficient information and not because of Failure to provide information.

The aim of the complaints procedure based on Art. 15 GDPR is to obtain information about the processing of personal data by the respondent.

With regard to the applicant's request for a declaration that the

Respondent requested a copy of ID, although it was already a qualified electronic one

Signature was presented, not

had been legal and that it was the

Respondent was reasonable, a further additional registration information at the

MA 62, it should be noted that Art. 77 GDPR (in conjunction with Section 24 DSG) only

It is right to lodge a complaint with a supervisory authority and thereby

Enforcement of subjective rights - if necessary by means of an official performance mandate

make possible. A right to establish that the Respondent in the past

allegedly illegally requested a copy of an ID or it was reasonable for her,

Obtaining registration information yourself is part of the right to information in accordance with Art. 15 GDPR

not derivable.

Irrespective of this, the Respondent cannot be opposed,

to have obtained more detailed information because the request for information - and thus also the

digitally signed documents - do not originate from the complainant herself, but

from the legal guardian. The proof of identity provided in this way therefore relates

exclusively on him, but not on the complainant and person seeking information.

Therefore, the decision had to be made accordingly.