

GZ: DSB-D123.089/0002-DSB/2018 from 19.7.2018□

[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 and/or changed for reasons of pseudonymization.□

Corrected obvious spelling, grammar, and punctuation errors.]□

[Notice from DPA: Cross-border case; therefore assessment solely on□

basis of the GDPR]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint of A\*\*\* Steuerberatungs GmbH□

(appellant) of June 22, 2018 v. N\*\*\* Search LLC (first respondent) and v□

the unspecified operator of the website "\*\*\*\*info.at" (second respondent).□

Violation of the right to erasure as follows:□

- The complaint is **rejected**.□

Legal basis: § 1 paragraph 3 and § 24 paragraph 1 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999□

idgF; Art. 1, Art. 4 Z 1 and Art. 77 Para. 1 of Regulation (EU) 2016/679 (General Data Protection Regulation□

– GDPR), OJ No. L 119 p. 1.□

REASON□

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

In a submission dated June 22, 2018, the complainant alleged a violation of the right to□

Deletion. With regard to the complaint against the first respondent, it was stated that□

on May 16, 2018, a request for deletion regarding a negative rating on N\*\*\* Search□

Locations or N\*\*\* Search Business would have been provided. The deletion of the "1 star rating" would be□

however, has not been carried out to date. Regarding the complaint against the□

The second respondent stated that on his website [http://www.\\*\\*\\*info.at/](http://www.***info.at/) an entry□

to the complainant's company would exist. Contacting the operator□

this website is not possible (comment by clerk: probably meant to process an application for

to provide deletion).

## B. Subject of Complaint

In the present case, it must first be checked whether the complainant as a legal person

the right to lodge a complaint with a supervisory authority within the meaning of Article 77 (1) GDPR or Section 24

DSG is accessible.

## C. Findings of Facts

The complainant is a legal entity (limited liability company – GmbH). she

brought a complaint on June 22, 2018 regarding violation of the right to erasure

Entries in N\*\* Search Maps or N\*\* Search Business and concerning entries on the website

[http://www.\\*\\*info.at/](http://www.**info.at/), which explicitly refer to the complainant as a legal entity.

Assessment of evidence: The findings made are based on the submissions of the complainant

dated June 22, 2018.

## D. In legal terms it follows that:

### D. 1 Applicable legislation

§ 1 para. 3 DSG reads including the title (emphasis added by the data protection authority):

(constitutional provision)

fundamental right to data protection

(3) Everyone has, insofar as they have personal data relating to the automated

Processing or for processing in manually, ie. files managed without automation support

are determined in accordance with statutory provisions

1. the right to information about who processes which data about him, where the data comes from and what it is used for,

in particular, to whom they are transmitted;

2. the right to correct inaccurate data and the right to erase inadmissibly

processed data.

Section 24 (1) DSG reads including the title (emphasis added by the data protection authority):

Complaint to the data protection authority□

Section 24. (1) Every data subject has the right to lodge a complaint with the data protection authority if they□  
is of the opinion that the processing of personal data concerning them violates the GDPR□  
or violates § 1 or Article 2, Part 1.□

Art. 1 GDPR reads including the title (emphasis added by the data protection authority):□  
article 1□

subject and goals□

(1) This Ordinance contains provisions for the protection of natural persons during processing□  
personal data and the free movement of such data.□

(2) This Regulation protects the fundamental rights and freedoms of natural persons and□  
in particular their right to protection of personal data.□

(3) The free movement of personal data in the Union may for reasons of protection of natural□  
individuals are neither restricted nor prohibited from processing personal data.□

Art. 4 Z 1 GDPR reads including the heading (emphasis added by the data protection authority):□  
Article 4□

definitions□

For the purposes of this Regulation, the term means:□

1. "Personal Data" any information relating to an identified or identifiable□  
natural person (hereinafter "data subject"); as identifiable becomes a natural□  
person who, directly or indirectly, in particular by means of assignment to an identifier such as a□  
name, to an identification number, to location data, to an online identifier or to a or□  
several special characteristics expressing the physical, physiological, genetic,□  
psychological, economic, cultural or social identity of this natural person,□  
can be identified;□

Art. 77 Para. 1 GDPR reads including the title (emphasis added by the data protection authority):□  
Article 77□

Right to lodge a complaint with a supervisory authority□

(1) Without prejudice to any other administrative or□

judicial remedy, the right to lodge a complaint with a supervisory authority, in particular in the□

Member State of their place of residence, place of work or place of the alleged infringement if□

the data subject believes that the processing of personal data concerning them□

data violates this regulation.□

D. 2 In substance□

According to § 1 paragraph 3 DSG idgF everyone has the in Z 2 leg. cit. stated right to erasure□

unlawfully processed data. According to the legal definition according to § 4 Z 3 DSG 2000 as amended□

Federal Law Gazette I No. 83/2013, a legal entity (including the complainant as a GmbH) fell under the□

term "affected". The scope of the GDPR, which has been in force since May 25, 2018, is exhausted□

but expressly on the protection of natural persons:□

The definition of "data subject" in Art. 4 Z 1 GDPR refers to an "identified or□

identifiable natural persons". Against this background, the right to lodge a complaint with a□

Supervisory authority according to Art. 77 Para. 1 of a legal person not accessible, since here too□

Right of appeal of an affected and thus natural person is turned off.□

Furthermore, it should be pointed out that according to § 1 Para. 3 DSG the right to deletion is inadmissible□

processed data according to Z 2 leg. cit. in accordance with statutory provisions. It is about□

in this case, therefore, a design mandate that is contained in the corresponding implementation provision in § 27□

DSG 2000 as amended by Federal Law Gazette I No. 83/2013 for the right to erasure has been fulfilled.□

However, with the new Data Protection Act (DSG) as amended by Federal Law Gazette I No. 24/2018, there is no corresponding

Implementation provisions no longer available. Rather, the provisions of the immediately effective□

GDPR (for the right to erasure: Art. 12 in conjunction with Art. 17), which, however, like□

executed do not provide for any possibility of appeal for legal persons. distant would one□

Interpretation of Section 1 (3) DSG to the effect that legal entities also have the right to erasure□

is accessible, § 24 para. 1 DSG assumes content that violates Union law.□

#### D. 3 result ☐

Since the complainant lodged a complaint regarding violation of the right to erasure and ☐

the data to be deleted refer explicitly to the complainant as a legal entity (GmbH), ☐

and because an entity is not a data subject raising a privacy complaint ☐

can, was to be decided in the result according to the verdict. ☐