

GZ: 2020-0.349.984 from June 26, 2020 (case number: DSB-D205.023)□

[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.□

The Respondent's company was not pseudonymised here, since it was loud□

Reasons for the decision of the universal service operators in accordance with Section 12 (1) PMG in this role□

was involved in the proceedings and the Respondent as such in the cited law□

is listed. A meaningful pseudonymization was also due to multiple□

References to the business activities of the Respondent as□

Universal service provider not possible in the circumstances (e.g. registered letter, "yellow note").□

The secrecy interest of the respondent who prevailed in the proceedings, whose□

action has been found to be lawful does not outweigh the public here□

Interest in the publication of the legally required by § 23 paragraph 2 DSG□

Decision.].□

NOTICE□

S P R U C H□

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

(Appellant) of April 17, 2019 against Österreichische Post AG□

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

- The complaint is dismissed as unsubstantiated.□

Legal basis: Art. 4 Z 2, Art. 5 Para. 1 lit. f, Art. 6 Para. 1 lit. c and lit. f, Art. 13, Art. 51□

Paragraph 1, Article 57 Paragraph 1 lit. 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 para. 1 and□

Paragraph 2, 18 Paragraph 1 and 24 Paragraph 1 and Paragraph 5 of the Data Protection Act (DSG), BGBl. I□

No. 165/1999 as amended; § 3 Z 4 and Z 12, § 12, § 17, § 20 of the Postal Market Act (PMG), Federal Law Gazette I □

No. 123/2009 as amended; □

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

REASON □

1. With the procedural submission dated April 17, 2019, repeated on June 23, 2019 and □

on July 26, 2019, the applicant alleged a violation of the right to □

confidentiality □

such as □

an injury □

the □

information requirements □

through □

the □

Respondent. □

The alleged breach of the information obligation will be dealt with in a separate procedure □

Business number DSB-D205.246. □

2. Regarding the alleged violation of the right to secrecy brought the □

Complainants summarized as follows: □

The complainant received a letter addressed to him by means of a so-called □

"Yellow slips" fixed on March 29, 2019 in a branch of the respondent. In the course of □

an employee of the Respondent had to present an ID card from the □

complainant, which was also submitted by the complainant. have in a row □

however, the employee makes a copy against his will and without his permission □

prepared. The ID was placed on a scanner and the data was recorded electronically □

been. The complainant further states that even in the General □

Terms and Conditions of the Respondent ("GTC Letter National") under point 3.5.2 only □

of a submission in case of doubt of the identity, and not of a data collection.□

3. With completion of July 22, 2019 (GZ: DSB-D205.023/0001-DSB-2019), the□

Data Protection Authority invites the Respondent to comment.□

4. In a submission dated August 20, 2019, the Respondent commented as follows:□

It is correct that the complainant has a recommended (= with receipt)□

Registered mail in a branch of the Respondent fixed, since he□

time of the attempted delivery had not been reached. He was therefore by means of "yellow□

Note" about the attempted delivery and the deposit of the consignment and about the□

Need to present an official photo ID when removing the shipment□

been informed. The notice of deposit also contains a reference to the□

The Respondent's data protection information, which in particular also contains information about the processing□
would inform of identification data.□

When the complainant corrected the shipment, an employee of□

Respondent asked the complainant to submit a photo ID□

prompted and then the specific ID data, as usual when a person dem□

employee is not personally known is automatically recorded by the system. To capture the□

ID card data is used by a scanning device, which only contains specific data from the respective□

Identity card, namely type of identity card, identity card number, issuing authority and date of birth□

as well as the corresponding name, select - a copy will not be made. the□

Complainant also acknowledged receipt of the registered mail on the .□

The alleged processing of the ID card data is to fulfill a legal obligation□

required, to which the Respondent is subject as the person responsible (Art. 6 Para. 1 lit. c□

GDPR): According to § 3 Z 12 PMG, the acceptance of registered mail to the□

to acknowledge the correct recipient. The handover to the right person is - if this is the□

Respondent not personally known□

is -□

only□

as part of a□

identification/authentication procedure to be carried out, i.e. by submitting a□

Official photo ID, possible. The Respondent, in accordance with□

§ 20 PMG General Terms and Conditions (esp. "AGB Letter") enacted, which also from□

have been approved by the regulatory authority. That also results from this□

Necessity of a confirmation of acceptance and identity verification (item 3.3 and 3.5.2□

of the GTC letter national and point 4.1 of the product and price list ("PVV") for□

return receipt letters, including registered mail). From these documents (GTC and PVV)□

it follows that the handing over of a registered item only after previous□

Identification or authentication is allowed. They have the ID data□

Respondent collected for the purpose of identification or authentication and thus□

along with the possible handling of potential investigations (point 3.10 of the□

GTC national letters) as well as any warranty cases (point 4 of the GTC national letters),□

i.e. to assert, exercise or defend legal claims and also to□

Implementation of the contractual relationship with the sender retained for 6 months and thereafter□

turned off. Also from the fact that the Respondent has possible warranty□

and/or be subject to claims for damages if a shipment fails□

will be handed over properly, in particular to the correct recipient□

a processing and storage authority. It must therefore be possible to at least□

to be able to defend within the statutory warranty period. Also in the frame□

the respondent must object to any proceedings before the data protection authority□

can freely prove, for example, that they have complied with their duty of care and their identity□

of the transferee have demonstrably checked. The Respondent referred to the time limit□

of Section 24 (4) DSG and a more detailed decision by the data protection authority□

regarding the admissibility of a copy of an ID card for identity verification.□

Furthermore, the processing of the ID card data is to protect legitimate interests of the Respondent and the respective sender iSd. Article 6 paragraph 1 lit. f GDPR required for the correct attribution to the actually addressed recipient and to be able to provide proof to the sender. Just be prevent any misuse. The interests of the Respondent and the of their contractual partner would violate the interests or fundamental rights and freedoms of the complainant prevail. There is no noticeable impairment of the complainant, since only the necessary data would be stored, which moreover, according to § 5 PMG as well as through extensive technical and organizational measures are protected.

The Respondent also stated that she your

information requirements complied and referred to the "Privacy Policy" which is on their website can be accessed.

5. With the completion of September 19, 2019 (GZ: DSB-D205.023/0003-DSB/2019) the Data Protection Authority to hear the complainant from the parties and the opportunity to opinion.

6. No further submissions were made by the complainant.

B. Subject of Complaint

The subject of the complaint is the question of whether the Respondent thereby violated his right to secrecy by an employee of Respondent in the course of picking up a postal item (registered mail) electronically recorded and stored the complainant's identity card data.

The alleged breach of information obligations becomes a business number in the proceedings□

DSB-D205.246 treated separately and was therefore not the subject of the complaint□

present procedure.□

C. Findings of Facts□

1. On March 29, 2019, the complainant picked up a letter in the (post) branch ****,□

**** XY, *** Street *. The Respondent did not have the Appellant to one□

closer□

determined point in time about an unsuccessful delivery attempt and the□

Subsequent deposit in the named post office by means of notification of a□

stored consignment ("yellow note"). This was a non-□

official, recommended (with acceptance slip) registered mail.□

2. The Appellant dismissed after being challenged by an employee of the Respondent□

was requested to present his official photo ID in the course of removing the consignment□

before.□

Subsequently, the identity card data: identity card type, identity card number,□

Issuing authority, date of birth and the corresponding name electronically using□

Scan device captured and stored for 6 months. After the retention period has expired□

the relevant data is deleted. A copy of the identity document itself was made□

however not created.□

Evidence Assessment: The Findings□

result□

himself□

out□

matching□

Submissions of the parties, in particular the complainant's submission of April 17, 2019□

and the Respondent's submission of August 20, 2019.□

3. The following general terms and conditions of the respondent were in effect on March 29, 2019:□

Evidence assessment: The finding results from the submission of the Respondent□

dated August 20, 2019 and remained unchallenged by the complainant.□

D. In legal terms it follows that:□

the□

complainant□

meant□

the□

Respondent□

have□

against□

Violate confidentiality obligations by providing a copy of an ID card (recording using a scanning device□

as well as saving the ID card data).□

As a result, the statements are not justified:□

D.1. On Article 6 Paragraph 1 Letter c GDPR:□

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□

concerning him□

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

According to § 1 paragraph 2 DSG restrictions of the secrecy claim, as far as the□

Use of personal data not in the vital interest of the□

Affected or with his consent, only to protect overriding legitimate□

interests of another permissible.□

The data processing in question was not carried out in the vital interest of the□

Complainant, there was still consent, which is why the legality due to the□

The protection of overriding legitimate interests was to be checked: A violation of□

confidentiality obligations□

is based on the case law of the data protection authority□

in particular not if the implementing provisions according to § 4□

Para. 1 DSG and the principles enshrined therein do not□

were violated (cf. the notification of October 31, 2018, GZ DSB-D123.076/0003-□

DSB/2018).□

According to Art. 5 Para. 1 lit. b GDPR, personal data must be processed for specified,□

are collected for clear and legitimate purposes and must not be in any way related to those purposes□

be further processed in a way that cannot be agreed upon ("purpose limitation"). The processing□

of personal data is justified, among other things, if it is used to fulfill□

a legal obligation to which the person responsible is subject (Article 6 (1) (c) GDPR),□

is necessary or to protect the legitimate interests of the person responsible or one□

Third parties, unless the interests or fundamental rights and freedoms of those concerned□

person who require the protection of personal data prevail (Art. 6 para. 1 lit. f□

GDPR).□

In this context, Art. 6 Para. 1 lit. c GDPR in conjunction with the PMG and Art. 6 Para□

lit. f GDPR relevant:□

However, the Respondent also correctly referred to the statutory provisions□

Obligations of the PMG:□

§ 3 Z 4 and Z 12 PMG, including the title, reads as follows (emphasis added by the□

Data Protection Authority):□

definitions□

§ 3.□

For the purpose of this federal law means:□

[...]□

4. "Universal Service Provider" one or more designated Universal Service Providers pursuant to□

Section 12 (1) or one or more designated postal service providers pursuant to Section 12 (2);

[...]

12. "Registered Item" means a postal item sent by the postal service provider as a flat rate

is insured against loss, theft or damage and in which the

the sender, if necessary at his or her request, a

confirmation of receipt of the shipment and/or its delivery

the recipient is granted;

Section 12 PMG reads as follows, including the heading (emphasis added by the data protection authority):

§ 12.

universal service operator

(1) With

When this federal law comes into force, Austrian Post will be

named universal service operator.

[...]

§ 20 PMG reads as follows including the heading (emphasis added by the data protection authority):

General Terms and Conditions of the Universal Service Provider

§ 20.

(1) The universal service provider has, in accordance with the provisions of this Act and

in the

the ordinances issued on the basis of this law

Universal service area to enact general terms and conditions.

for services

[...]

In any case, a legal obligation pursuant to Article 6 (1) (c) GDPR is one

Obligation by virtue of objective law (Frenzel in Paal/Pauly, General Data Protection Regulation

Art. 6 para. 16) to be understood, resulting in particular from a Member State or

Union legal basis can arise and also directly to the

Data processing relates (Kastelitz/Hötzendorfer/Tschohl in Knyrim, DatKomm Art 6 GDPR

margin no. 39).

As a universal service operator, the Respondent is subject to § 3 Z 4 in conjunction with § 12 (1).

PMG the provisions of the PMG and is insofar as the addressee of this law

resulting legal obligations.

According to the established case law of the Constitutional Court on the quality of a

Intervention norm in the sense of § 1 para. 2 DSG (2000) this must be “sufficiently precise, i.e. for everyone

foreseeable, describe the conditions under which the determination or the

Use of the data for the performance of specific administrative tasks is permitted.

The respective legislature must therefore iSd. § 1 para. 2 DSG 2000 a matter-specific

Provide regulation in the sense that the cases of permissible interference with the fundamental right

Data protection to be specified and limited (VfSlg. 18.146/2007).

The data protection authority does not overlook the fact that this case law relates to a

refers to an overriding norm that is intended to legitimize official action, which is not the case here

is.

Nevertheless, this case law can also be applied mutatis mutandis if

Those responsible for the private sector (§ 26 Para. 4 DSG) on an enabling standard iSd

Article 6 paragraph 1 lit. c GDPR. This also results from Art. 5 Para. 1 lit. a GDPR,

that personal data is processed lawfully, fairly and in

processed in a manner that is comprehensible to the data subject.

It is therefore necessary to examine whether the provisions of the PMG create a legal obligation to

processing of personal data according to Art. 6 Para. 1 lit. c GDPR.

§ 3 Z 12 PMG standardizes the need for confirmation of receipt or

delivery of the consignment. About the mere investigation, speak beyond that

Collection or storage of personal (identification) data meets § 3 Z 12 PMG

however, no statement. This applies equally to Section 20 (1) PMG, which only

Constitution of general terms and conditions, but no legal obligation to

Processing of personal data standardized.

Furthermore, it should be noted that the general terms and conditions of the

Respondent itself no legal obligation due to lack of substantive legal quality

can represent.

As a result, the provisions of the

PMG in conjunction with Art. 6 Para. 1 lit. c GDPR no legal basis for scanning and

storing the complainant's identity card.

D.2. To protect legitimate interests (Art. 6 Para. 1 lit. f GDPR):

As a result

It must be checked whether the processing of the personal data of the

complainant to protect the legitimate interests of the respondent or one

Third parties within the meaning of Art. 6 Para. 1 lit. f GDPR was required.

According to the case law of the ECJ, the processing is based on the legal basis of the "legitimate

interest" under three cumulative conditions: i) perception of a

legitimate interest by the person responsible or the third party or third parties to whom the

data are transmitted, ii) Necessity of processing the personal data

to realize the legitimate interest and iii) no predominance of fundamental rights and

Fundamental freedoms of the data subject about the perceived

legitimate interest (cf. with regard to Directive 95/46/EC the judgment of the ECJ of

December 11, 2019, C-708/18 [TK] margin no. 40 with further references).

i) Legitimate interests of those responsible or a third party

It must first be checked whether a legitimate interest of the respondent or one

third parties in the processing of the complainant's identification data

has passed:

In this regard, the Respondent argued, among other things, that she might
be subject to warranty and/or damage claims by the sender
could and the processing thus to protect or defend their legal claims
was necessary.

It should be noted that the Respondent's interest in the event of a
litigation sufficient, at least within the statutory warranty period,
defend and provide evidence of lawful delivery to the correct person
to be able to, was to be regarded as justified (cf. Kastelitz/Hötzendorfer/Tschohl in
Knyrim, DatKomm Art 6 GDPR para. 54).

Against this background, the existence of a legitimate
interest of

Respondent to affirm the processing of the relevant ID data.

ii) Necessity of data processing

In addition, it must also be recognized that the processing of the ID card data of the
Complainant could serve in the event of a legal dispute, the handover to the
to be able to prove the correct recipient.

iii) No overriding of the fundamental rights and freedoms of the data subject

Most recently, the Respondent's stated interest in data processing
against the complainant's claim for secrecy and any
check predominance.

Among other things, this also depends on the reasonable expectations of the complainant
to be turned off, i.e. in particular whether he was at the time the ID card data was collected and
could reasonably have foreseen, given the circumstances in which it takes place
processing for this purpose may take place (cf. recital 47 of the GDPR).

The collection and storage of ID card data for the purpose of defending

Legal claims regarding postal items are in any case within the general

life experience and was therefore also easily foreseeable for the complainant.□

For the specific balancing of interests, it should also be noted that there are no□

special categories of personal data according to Art. 9 Para. 1 DSGVO, none□

criminally relevant data according to Art. 10 GDPR and also no other□

personal data were processed with a particularly intensive intervention in□

would be linked to the fundamental right to secrecy.□

The categories of data processed by the Respondent are by no means□

excessive and the storage period of six months is by no means as long□

to be considered disproportionate. Also with regard to the case law of the ECJ□

no excessive data processing can be seen: the processing was also□

both in terms of the scope of the data processed and in terms of□

Storage duration to the absolutely necessary (cf. e.g. ECJ 11.12.2014, C-212/13, Ryneš)□

limited, since the Respondent only had the ID data for six months and□

thus only stored for a clearly defined, non-excessive period of time.□

D.3 Result:□

Against this background, the data protection authority comes to the conclusion that the□

entitled□

Respondent's interests in relation to fundamental rights and□

fundamental freedoms of the complainant prevail and the processing is lawful□

Based on "legitimate interests" according to Art. 6 Para. 1 lit. f GDPR.□

The appeal was accordingly dismissed.□