

GZ: 2020-0.127.361 from July 9, 2020 (case number: DSB-D124.365)

[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 data protection complaint of Eugen A***

(complainant)

from the

2nd of April

2019

against

the

Education Directorate N***

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

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

Respondent gives the complainant the right to information

violated by not providing him with any information corresponding to Art. 15 GDPR

has granted.

2. The Respondent is instructed, the Appellant within four

weeks to provide information in accordance with Art. 15 GDPR.

Legal basis: Art. 12, Art. 15, Art. 51 (1), Art. 57 (1) lit. f, Art. 58 (2) lit. c and

Article 77 paragraph 1 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter:

GDPR), OJ No. L 119 of 4.5.2016 p. 1; Sections 18 (1) and 24 (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. With submission of April 2, 2019, improved by two submissions of May 13, 2019

(ha. received on May 14 and 17, 2019), the complainant lodged a complaint with the

data protection authority and claimed a violation of the right to information. The

Respondent wanted full data information about the stored data only in

Grant access to files within the meaning of § 17 AVG.

The

complainant wanted

full data disclosure

and

insight into files

in the

Student description sheet or student record sheet

(former) public

Hauptschule B***straße *9, A-***3* Y***, school year 1959/60. The data disclosure will

denied.

2. In its opinion of October 25, 2019 (ha. received on October 28, 2019).

the Respondent stated that the Complainant had a request on January 16, 2019

asked for information in accordance with the GDPR. By letter dated March 14, 2019

Complainant has been invited to the Education Directorate N*** for inspection of the files, so that

of course, the opening of access to those led by the Education Directorate N***

personal databases of the complainant have been meant.

In the course of the "inspection of files" the complainant would have full access to the

the personal data held by the Bildungsdirektion N*** have been granted. Also would have

excerpts and copies of the data and file collection are made available to him.

This summons was verifiable by personal acceptance on March 18, 2019

been delivered. The complainant did not reply to this letter.

3. By letter dated November 5, 2019 (ha. received on

November 7, 2019) that the Respondent's statement brought nothing new. It

documents had been submitted by the Respondent, which were already dated

complainants had been submitted.

B. Subject of Complaint

It follows from the complainant's submissions that the subject of the complaint is

The question is whether the respondent gives the complainant the right to information

violated by inviting him to inspect the files in response to a request for information

has.

C. Findings of Facts

On January 16, 2019, the complainant sent excerpts of the following request by email

Mail to the complainant:

"To the Education Directorate N***

formerly *** school inspector ***

Request for data information:

I request full information about my personal data stored.

Also all incoming and outgoing emails."

The Respondent replied to the Appellant's request by letter

dated March 14, 2019 as follows:

"Dear Mr. A***!

Due to your request for information about your at the Education Directorate N ***

We would like you to inspect the files on the following

Invite appointment:

Date: Thursday 28 March 2019

Time: 9:00 a.m

Location: ***, ground floor

According to § 17 AVG you can get files or parts of files on the spot

Make copies yourself or make copies or printouts at your expense
permit.

We ask that you bring an official photo ID with you.

If you accept this charge for important reasons (e.g. illness, compelling
occupational hindrance) cannot comply, you will be asked to do so
to be informed immediately in order to be able to postpone the appointment if necessary."

The complainant did not appear on the date specified in the letter. The

The Respondent then informed the Appellant by letter dated

28th March

2019,

that

because of

of

unexcused no-show

the

"Data disclosure procedure" will be discontinued.

Evidence assessment: These findings result from what is insofar consistent

Submissions of the parties to the proceedings and the submitted enclosures.

D. In legal terms it follows that:

According to Art. 15 GDPR, a data subject has the right to obtain a

to request confirmation as to whether they are processing personal data relating to them

become. If this is the case, the person concerned also has the right to information about

this personal data and the data specified in Art. 15 (1) lit. a to h leg. cit. mentioned

Information, also, if necessary, additionally about the information according to paragraph 2 of the Determination.

Furthermore, according to Art. 15 Para. 3 leg. cit. an affected person

Copies of the personal data that are the subject of the processing are available to be provided if requested by the data subject.

If the respondent states that the complainant in the course of the

Access to files would have been possible in full, insight

in the at the

Respondent to receive personal data stocks and man

provide him with excerpts and copies of the data and file collection in the course of this would have asked, the following is to be countered to her.

The GDPR is a subsidiarity regulation according to § 44 Para. 5 DSG in the area of application of the 3rd main part of the DSG (which does not apply in this case) foreign.

From this it can be deduced that now, by means of a request for information, in principle also

Information about the content of documents and file components can be requested (cf.

also the decision of April 18, 2019, GZ DSB-D122.913/0001-DSB/2019), if therein

personal data of the person concerned are included and the factual

Scope of application of the GDPR is opened (cf. Art. 4 para. 1 leg. cit).

Furthermore, information pursuant to Art. 15 GDPR has in any case information about the person concerned person processed personal data ("master data") and the information

in accordance with Article 15(1) lit. a - h ("metadata"), which the complainant probably

was also not brought to the attention of the person by appearing at the appointment for inspection of files would be.

According to Art. 12 Para. 1, a person responsible has to take appropriate measures in order to

data subject all information pursuant to Art. 13 and 14 and all communications pursuant

Art. 15 to 22 and Art. 34 GDPR, which relate to the processing, in more detail, transparent, understandable and easily accessible form in a clear and simple way to transmit language.

According to Art. 12 Para. 3 GDPR, this information is immediate, but in any case to be made available within one month of the request.

In any case, the Respondent did not respond adequately to the request for information reacted and was to be instructed to give the complainant one of the Art. 15 DSGVO to provide relevant 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).

It was therefore to be decided accordingly.