

GZ: DSB-D123.627/0003-DSB/2018 from 2.1.2019□

[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 Walter A\*\*\*\*'s data protection complaint□

(Appellant) of October 17, 2018 against N\*\*\*\*travel (Respondent)□

for violation of the right to information and violation of the conditions for the□

Legality of consent as follows:□

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

2. Complaint about breach of legality of consent□

is rejected.□

3. The complaint regarding the alleged violation of the information obligation□

rejected.□

Legal basis: Section 13 (3), Section 13 (8), Section 38a, Section 73 (1) General□

Administrative Procedures Act 1991 – AVG, Federal Law Gazette 51/1991, as amended, Section 24 Paragraph 2, Section 24□

Para. 6 and 10 Data Protection Act – DSG, Federal Law Gazette 165/1999, as amended; Art. 15, Art. 56 para. 1,□

Art. 77 Para. 1 General Data Protection Regulation (GDPR), L119 S.1, as amended;□

REASON□

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

With the procedural submission dated October 17, 2018, the complainant led□

from receiving unwanted advertising from the "N\*\*\*\*travel company" and that this□

would by no means be legal, since he never gave his consent to advertising emails□

receive.□

With the following submission of November 15, 2018, the complainant stated that he had□  
received an e-mail after which within the group of companies, which the□  
designated Respondent, a data transfer would have taken place□  
and that he does not see why within two weeks (as in the letter□  
required) must object to the data transfer.□

With completion GZ: DSB-D123.627/0003-DSB/2018 of November 20, 2018 demanded the□  
Data Protection Authority to correct deficiencies, particularly those deemed violated□  
rights and to designate a clear respondent.□

With a submission dated November 25, 2018, the complainant submitted further emails□  
Correspondence, including an email dated November 25, 2018, in which at□  
Information was requested and stated that he named the respondent as N\*\*\*travel□  
B.V. and see both the right to information in accordance with Art. 15 GDPR and the right□  
for information when collecting the data from the data subject in accordance with Art. 13□  
GDPR violated. Furthermore, against the provisions of Art. 7 regarding the□  
conditions for consent have been violated.□

#### B. Findings of Facts□

With a submission of October 17, the complainant made a complaint against□  
N\*\*\*travel B.V. due to a violation of the right to information. A□  
The request for information was not addressed to the respondent at this time.□  
The Respondent has branches in several Member States□  
European Union.□

#### Evidence assessment:□

Evidence was gathered through the complainant's submissions and through a□  
Official research on the homepage [https://n\\*\\*\\*travel.at/datenschutzerklaerung](https://n***travel.at/datenschutzerklaerung).□

#### C. In legal terms it follows that:□

Regarding point 1:□

The complainant alleges a violation of the right to information without a den□

to have made a request for information that is the subject of the proceedings.□

The object of the data protection complaints procedure is□

constitutive complaint of the complainant formed. Appropriate is in one□

Procedure where formal deficiencies according to § 13 Abs. 3 AVG by the competent authority□

are eliminated, the procedural input which duly improved□

would.□

The subject of the proceedings in the first point of the ruling is the alleged infringement in□

right to information. At the time the complaint was lodged, there was no□

Request for information has been made to the designated respondent. Article 15□

GDPR is conceptually a right that requires an application and requires a limine to the□

designated Respondent received request.□

Since only remediable defects can be assigned to an order in accordance with Section 13 (3) AVG□

are accessible, in the case of defects that cannot be rectified, the request is made□

to be dismissed due to the lack of entitlement to lodge a complaint. After□

ed. Jurisdiction on remediable or non-remediable defects must be distinguished as to whether□

the circumstance to be proven is missing at the relevant time (this case is not□

remediable defect) or whether it is merely based on proof of an already existing one□

circumstance is lacking (in the latter case the defect can be remedied; cf. the published B of□

November 11, 2015, Ra 2015/04/0077, with further references).□

Subsequent submission of a data protection request for information to the□

designated respondent does not lead to the healing of the irremediable defect,□

that the complainant in relation to the alleged facts at the time of□

filing the complaint lacked legitimacy, but it can be assumed that□

that there is another circumstance that is not identical to the subject of the proceedings□

(Manual reference: VwGH December 21, 1987, 87/10/0051).□

The complaint regarding the alleged violation of the right to information was□  
to be dismissed accordingly.□

Regarding point 2:□

The complainant subsumes the lack of information about the proof of a□

In his opinion, the necessary consent under Art. 7 GDPR:□

A complaint must meet the formal requirements of § 24 DSG. According to § 13□

Section 3 General Administrative Procedures Act 1991 (AVG), Federal Law Gazette No. 51/1991 as amended.□

Deficiencies in written submissions do not authorize the authority to reject them. the□

Rather, the authority shall promptly and ex officio arrange for their rectification□

can instruct the intervener to remedy the defect within a reasonable period of time□

apply with the effect that the attachment after the unsuccessful expiration of this period□

is rejected. If the defect is remedied in good time, the attachment shall be deemed to have been made□

originally introduced correctly.□

With the order to remedy defects dated November 20, 2018, the data protection authority requested□

on the complainant to rectify specified formal deficiencies,□

in particular to indicate the rights that he considers to have been infringed.□

This order to rectify defects was made within the set period□

Paragraph 2 is not sufficiently fulfilled by the complainant not referring to a□

subjective right, which is specified by § 1 DSG and Chapter III DSGVO,□

based, but on Art. 7 "Consent conditions". § 24 Para. 2 Z 2 DSG speaks□

of a right deemed infringed. The provision referred to by the complainant□

does not standardize any law, but merely certain prerequisites that□

justification for data processing. From the one mentioned□

No subjective right can be derived per se, which is why after□

the wording of § 24 Para. 2 Z 2 DSG the requirement that the violated□

deemed right must be designated is not fulfilled.□

The complaint regarding a violation of the law pursuant to Art. 7 GDPR was therefore□

to be rejected according to § 13 para. 3 AVG.□

Regarding point 3:□

The Respondent referred to N\*\*\*travel B.V. as the subject of the proceedings□

Respondent.□

Notwithstanding the correspondence from which the complainant already□

should have shown that N\*\*\*travel B.V. not for data processing□

Responsible within the meaning of Art. 24 GDPR and therefore not the one according to § 24 Para. 2□

Z. 2 DSG is the complainant to be designated, is already clear from the□

N\*\*\*travel privacy statement that N\*\*\*travel B.V. not responsible for the□

alleged violation of the information obligations is: "C\*\*\* Ltd. is a British company□

headquartered in London and operates the "n\*\*\*travel.at" website.□

The Administrative Court represents in its case law, which is also relevant here□

to the DSG 2000 that the alleged legal infringement is attributable to the legal entity□

must be (finding of June 26, 2018, Ra 2017/04/0032). When evaluating□

In principle, the content of the attachment is decisive for party attachments (knowledge of the□

Administrative Court of February 10, 1998, 97/04/0231), an official "reinterpretation" is coming□

therefore out of the question.□

It was therefore also an investigation as to whether the sole responsibility of□

Austrian data protection authority, or a leading authority of one□

other supervisory authority is not to initiate but to reject according to the verdict.□