GZ: 2020-0.204.456 from August 10, 2020 (case number: DSB-D124.339)

[Editor's note: 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 may be abbreviated and/or changed for reasons of pseudonymization.

Corrected obvious spelling, grammar, and punctuation errors.]

NOTICE

S P R U C H

The data protection authority decides on Ursula A***'s data protection complaint

(Appellant), represented by Q*** Rechtsanwälte OG, Rechtsanwälte in **** Vienna, dated

December 16, 2019 against Dr. Viktor A*** (Respondent), represented by XY & Partner

Rechtsanwälte GmbH, Rechtsanwälte in **** G*****, due to 1) violation of the right to information and

2) in the right to secrecy as follows:

1. The complaint in the right to information is partially granted and it is stated that

that the Respondent violated the Complainant's right to information

by failing to provide information pursuant to Art. 15 Para. 1 and Para. 2 GDPR.

2. The respondent is instructed within a period of 4 weeks in other

Execution to provide the complainant with information to the extent of clause 1.

3. The complaint in the right to secrecy is upheld and it is determined that

the Respondent gives the complainant the fundamental right to secrecy

according to § 1 Abs. 1 DSG by making tape recordings without their knowledge

has made to this if necessary

in a contentious divorce and

to submit maintenance proceedings as evidence.

4. The complaint is otherwise dismissed.

Legal basis: Article 2 (2) c, Articles 12, 15, Article 51 (1), Article 57 (1) f, Article 58 (2) c

and Art. 77 Para. 1 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter:

GDPR), OJ No. L 119 of 4.5.2016 p. 1; §§ 1, 18 para. 1 as well as 24 para. 1 and para. 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

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1.

In a complaint dated December 16, 2019, the complainant summarized that

that on October 16, 2019 you sent a request for information in accordance with Art. 15 GDPR to the

addressed the respondent.

The Respondent, through his legal representation, wrote in a letter dated November 4th

2019 responded by only providing fragmentary negative information. Also the

further correspondence in this regard had remained fruitless.

Due to the Respondent's refusal to provide the Complainant with information about them

The complainant sees her right to provide the personal data concerned

violated for information in accordance with Art. 15 GDPR. Through the secretly recorded and to

publication of certain audio recordings of conversations with the complainant

the Respondent also violated their fundamental right to secrecy in accordance with Section 1 (1) DSG

breach, since the data processing is contrary to the principles

for processing

personal data in accordance with Art. 5 GDPR (in particular against good faith) and without

sufficient justification according to Art. 6 GDPR has taken place.

The parties are currently engaged in contentious divorce and alimony proceedings.

With regard to the incomplete provision of information, the Respondent relies on the

Exception provision of Art. 2 Para. 2 lit. c GDPR (exercise exclusively personal or

family activities). However, an application of Art. 2 Para. 2 lit. c GDPR is not conceivable.

With regard to the data deletion alleged by the respondent concerning the e-mail account

According to the complainant, he negated his obligation under Art. 32 GDPR, regular backups

to create business and private accounts.

With regard to the storage of SMS and Whatsapp

Dealing with the complainant (see Enclosure ./2, point 3), he points out that this

had in any case already been submitted in the pending maintenance proceedings and here negate that

the obligation to provide information is to be fulfilled directly towards the information seeker and not through a submission

can be substituted in relation to third parties (such as a court).

The Respondent thus violated the fundamental right to secrecy pursuant to Section 1 (1) DSG

of the complainant and is in breach of his obligations under Art. 15 para. 1 and

Paragraph 3 DSGVO not complied with accordingly.

2.

With a statement dated February 14, 2020 (ha. received on February 19, 2020), the

Respondent summarized that it was correct that the complainant on

October 16, 2019 sent the respondent a request for information via their legal representative

transmitted and information about the respondent processed by the complainant

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personal data, in particular your e-mail account ursula@a*** (sic), which belongs to this

Account saved contacts, as well as tape recordings, demanded.

In a timely manner in accordance with this request for information, the respondent had his

Legal representation informed that due to the budget exception according to Art. 2 Para. 2 lit. c GDPR

data processing in the family area is exempt from the provisions of the GDPR

and therefore no right to information at all. It is also expressly disputed by the

Complainant alleged violation of the principles of the GDPR according to Art. 5 and the

Lack of justification according to Art. 6 GDPR.

Should the data protection authority - contrary to expectations - nevertheless come to the conclusion that in concrete

If there is no exception according to Art. 2 Para. 2 lit. c GDPR, the legality will be discussed

the data processing is carried out as follows (reproduction as in the original, formatting not 1:1

reproduced):

"The processing of personal data is then according to Art. 6 Para. 1 lit f GDPR

justified if this is in the overriding legitimate interest of the person responsible

he follows. The assertion or defense of legal claims also

even a justification according to Art 9 Para 2 lit f GDPR for the processing of

sensitive personal data (among other things, data about marital problems are treated by the Rsp as

sensitive data qualified), whereby the term "legal claims" is to be interpreted broadly here

and in particular private law legal positions. It is irrelevant whether the

Responsible creditor or debtor is and is a data processing at least then

justified if a conflict has already arisen from a legal relationship,

which forces the claimant to procedurally enforce the claim. In this

In this case, it is not necessary to weigh up the interests of the person concerned, but

Processing of - even sensitive - personal data is permissible in any case (cf

Kühling/Buchner, GDPR (2016) 309). Against this overriding legitimate interest

of the person responsible, the data subject also in accordance with Art. 17 para. 2 lit. e GDPR

not through with a deletion claim.

The respondent has

in the specific case regarding the processing of

personal data, in particular the tape recordings as well as those of him

saved SMS messages, a predominant legitimate

interest to

enforcement of his legal rights.

With regard to a possible obligation to provide information on the part of the respondent - which in view of

of the scope of the household exemption does not exist anyway - is referred to the

Restriction of this obligation according to Art. 23 para. 1 lit. i and j GDPR.

Accordingly, on the one hand there are the rights and freedoms of the person responsible or third parties

Persons have a right to information and thus also a transmission of copies of the

processed personal data. On the other hand, a limitation to

Protection of the interest of a (even potential) party to the litigation possible

civil enforcement

their claims

ensure and

puts one

collection of evidence

for documentation of an infringement

in this

In any case, the context is a valid reason for a restriction. Information

can also be refused if due to full information - i.e. when handing over the

tapes - the process position of the person responsible would be weakened (cf. Kühling/Buchner,

GDPR (2016) 490f).

After the Respondent received the tape recording and the SMS

Correspondence with the complainant exclusively

for a potential

Use of the data to enforce his civil claims in the ongoing

processed divorce proceedings, a refusal to provide information is permissible in any case.

Regarding the alleged obligation that the complainant is obliged under Art. 32 GDPR

would be to regularly create backups of business and private accounts

on the one hand again to the budget exception and thus to the lack of application of the

General provisions of the GDPR. The principle of minimizing the

Storage period (recital 39) sees - supplemented by the deletion claim of

data subject according to Art. 17 GDPR - in addition, that the storage period of the□

data is to be limited to the absolutely necessary minimum and the data with□

be deleted at the end of this period. There is an obligation to store data□

only in those cases where a statutory retention period provides for this, which□

private mail account of the complainant probably not□

it is a possibility. the□

The Respondent thus has the data of the Complainant's mail account in□

Deleted in accordance with data minimization policy."□

The Respondent therefore requests that the complaint be dismissed in its entirety.□

3.□

With a statement dated March 16, 2020, the complainant relinquished her right□

Party heard use and submits as follows (reproduction as in the original, formatting not 1:1□

reproduced):□

"In its statement, the Respondent once again bases itself on the□

Exception provision of Art 2 Para 2 lit c GDPR ("household exception"). He overlooks□

hereby that the application of this provision requires a restrictive interpretation as well as,□

that data is processed "exclusively" for private or family purposes.□

This does not include mixed data collections such as address books, for example□

include both private and business contacts (cf. Kühling/Buchner, DS-□

GVO/BDSG², Art 2 RZ 26 mwN).□

With regard to e-mails and contacts stored on the e-mail account, SMS traffic□

and Whatsapp messages, the household exception applies (and thus a□

refusal of the right to information) not because this is not the case□

exclusively private contacts and message content.□

If this data from the respondent - according to his assertion in Annex ./2□

- should actually have already been deleted, he has hereby against his□

Obligation according to Art. 32 DSGVO breach, regular backups of business and private□

to create the accounts used (see Pollirer in Knyrim, DatKomm Art 32 GDPR RZ 45).□

After the respondent also knew that the complainant this data□

still needed, he cannot rely on the requirement of data minimization either.□

If the Respondent - according to his assertion in Annex ./2 - on it□

cites that SMS traffic and Whatsapp messages already□

im pending□

Divorce proceedings had been submitted, he overlooks the fact that the duty to provide information directly□

is to be fulfilled towards the information seeker and not through a template towards□

third parties (such as a court) can be replaced.□

Also with regard to the sound recordings secretly made by the Respondent□

The household exception does not apply to talks with the complainant; these serve□

solely for the purpose of "preserving evidence" to counter them as supposedly incriminating material□

use the applicant in the pending divorce and alimony proceedings□

(see e.g. RS0132579 T2). Just by making the recordings□

Respondent already violated the complainant's right to secrecy□

violated□

Also the turning off attempted by the Respondent in this context as an alternative□

to assert his supposedly overriding legitimate interests or□

Defense of legal claims (see opposing statement point 4.1.) applies□

Not objective: The gathering of evidence for a civil dispute does not constitute□

legal reason for such an intervention in the right to secrecy. Secret□

recorded conversations are in any case inadmissible if they are not the result of□

another lack of evidence is required (see most recently OGH 20.1.2020, 1Ob1/20h□

mwN; see also a case on secret video surveillance with a comparable result□

DSB-D123.978/0003-DSB/2019 from 13.12.2019). There is a lack of evidence

however, does not exist and was not even claimed by the Respondent.

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Accordingly

has

the respondent

regarding

the

unlawful

Sound recordings not only violate the fundamental right to secrecy

Complainant violated § 1 para. 1 DSG, but stands by the complainant

In addition to a right to deletion, there is also a – upstream – right to information. The ones from

Respondent cited alleged restriction of the right to information with reference

is based on Art 23 Para 1 lit and j GDPR (see opposing statement point 4.2.).

not before: This provision is merely an opening clause.

In contrast to the German legal situation cited by the respondent, there is one

such restriction of the right to information in the event of jeopardy of legal claims

Not in Austria (see BVwG 6/25/2019, W258 2188466-1)."

For all these reasons, the Respondent's objections are entirely unfounded. the

Complainant therefore maintains its complaint in its entirety.

B. Subject of Complaint

First, the subject of the complaint is the question of whether the respondent is the appellant

thereby violated the right to information by submitting your request for information in accordance with Art. 15 GDPR

from October 16, 2019 until the end of the procedure before the data protection authority

has corresponded.

Second, the subject of the complaint is the question of whether the respondent is the appellant

has violated the fundamental right to secrecy according to § 1 para. 1 DSG by he without her

Knowledge has taped them to use as evidence in a pending case

Civil law dispute (disputed divorce, maintenance) to be able to present.

C. Findings of Facts

The parties are currently engaged in contentious divorce and alimony proceedings.

The complainant had a "subaccount" on the respondent's e-mail account.

This account has already been canceled and the Respondent has no data.

Backups were not made either.

The respondent has SMS and WhatsApp messages from the complainant.

Furthermore, the Respondent has tape recordings of the Appellant without her knowledge

made about it.

Evidence assessment: These findings result from the party's arguments, which are undisputed in this respect.

On October 16, 2019, the complainant

the following request for information to the

Respondent directed (reproduce the original):

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"Regarding: Ursula A***/ information according to Art. 15 GDPR

Dear Doctor. A***!

Our law firm was founded with the legal representation of Mrs. Ursula A*** regarding the

Assertion of your rights as a data subject in accordance with Article 12 ff GDPR.

We hereby represent on behalf of our client in accordance with Article 15 of the General Data Protection Regulation

(DSGVO) a request for information about your personal data. This application includes

also the request for the transfer of a copy of the personal data in accordance with Article 15 (3).

GDPR. The application relates in particular but not exclusively to:

- All e-mails of the account (also) made available for private use

ursula@a***.at; expressly included are all those e-mails that have been deleted by means of a backup

have been secured.□

- All contacts stored for the above account; expressly included□

are all those deleted contacts that have been backed up.□

- All tape recordings made by you without the knowledge of our client□

from her.□

We would like to point out that the information pursuant to Art. 12 Para. 3 GDPR is generally within□

must be made available one month after receipt of the application.□

Any criminal and administrative penal measures are expressly reserved.□

Kind regards□

Q*** Attorneys OG"□

With the following legal letter dated November 4, 2019, the respondent referred to the□

Responded to requests for information (reproduction of the original):□

"Dear Mr. Colleague!□

I may announce to you that Dr. Viktor A*** our law firm with the law-friendly□

representation of his interests and has granted power of attorney for this purpose.□

The client gives me your letter of October 16, 2019 and may I inform you of the following:□

1 . We assume that the GDPR in accordance with Art 2 Para 2 lit c applies to the case in question□

is not applicable at all.□

- 8th -□

2.□

Your wife client had a "subaccount" on our client's account. This was□

long since deregistered, the client has no data. This was also done explicitly□

agreement with your client. Backups were not made.□

This means that the client has not saved any contacts on his account either, but your wife has□

concern client.□

3.□

However, the client does have SMS and WhatsApp traffic, a good part of these documents

was in any case pending maintenance proceedings and will be pending in divorce proceedings

submitted

4.

The client actually made tape recordings, your client knows about this

in the meantime. These tape recordings will be — and I assume they will agree after that

colleague dr M*** also referred to it — submitted as part of the divorce proceedings. Should

If consent to the submission is not given, we will of course make a disclosure within the framework of the

Do not carry out divorce proceedings for the time being, but under certain circumstances only after a

carry out a detailed interrogation of your wife client over several months in a suitable way.

5.

According to the last sentence in your letter of October 16, 2019, your client reserves the right

criminal and administrative penal measures.

I request you to do so within 10 days, which must be in writing by November 13th, 2019 at the latest

to announce for which case these steps are reserved.

Just for the sake of completeness, I would like to inform you that as part of the spousal support proceedings already

Forfeiture is objected to and that is evident to our client in this letter

threat constitutes a further serious breach of the marital duty of assistance. Our

The client therefore sees this threat not only as a further serious marital misconduct, but also as a

claim another reason for forfeiture of spousal support.

Pending your timely response, I subscribe

with excellent collegial respect

XY & Partner Rechtsanwälte GmbH”

The complainant pointed to this in the following legal letter dated November 11, 2019

replicated (reproduction of the original):

"Dear Mr. Colleague!

First of all, we can state that the request for information in question pursuant to Art. 15 GDPR in

is not directly related to the pending divorce proceedings and a representation

in this case not carried out by our office. Although the dependency is known, we are in the

related procedural details not involved.

With regard to your bullet points, we can comment as follows:

Regarding 1.: Since the recordings by your client obviously do not reflect family life together

served, but on the contrary aimed at its dissolution and to the exclusive detriment of ours

Client, an application of Art 2 Para 2 lit c GDPR is not conceivable.

Regarding 2.: We take note that Dr. Viktor A***, notwithstanding Article 32 GDPR, none

regular backups of business and private e-mail accounts.

Re 3. and 4.: These points have no apparent connection with the subject matter

Request for information, which is why this is not discussed in detail. However, we allow ourselves

to point out that the information according to Art. 15 GDPR is not available to a third party (court).

has and may take place, but towards the person concerned. The requested information is substantive

moreover, also more extensive (see Art 15 Para. 1 GDPR) than simply submitting a copy of the

Recordings according to Art 15 Para 3 GDPR, which our client continues to request.

With regard to consent to submission in the pending court proceedings, I refer to the there

representative colleagues.

Regarding 5: The steps addressed here are those that our client should take as a result of the possible injury

of their privacy and data protection rights. In this regard, we point out

that the request for information was received by your client on October 16, 2019 and that we have a positive one

await processing. If the one-month period for replying expires unused

or the request for information is insufficiently answered, our client is free to do so

statutory right to lodge a complaint with the Austrian data protection authority

(Art 77 GDPR in conjunction with Section 24 (1) DSG).

Kind regards

Q*** Attorneys OG"

On December 16, 2019, the complainant filed the data protection complaint at issue

raised.

No information according to Art. 15 GDPR was given until the end of the official procedure.

Findings: The findings result from the transmitted attachments ./1 to ./3 as well as from

the party's argument, which is undisputed in this respect.

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D. In legal terms it follows that:

1. GDPR Applicability – Household Exception

First of all, it must be checked whether the GDPR - following the arguments of the respondent -

applies at all.

The Respondent states that due to the budget exception under Art. 2 Para. 2

lit. c GDPR, data processing in the family area from the provisions of the GDPR

is excluded and therefore there is no right to information at all.

The complainant, on the other hand, is of the opinion that the exception provision of Art. 2 para. 2

lit. c GDPR require a restrictive interpretation and that data - in order to be subject to this

Exception to fall - processed "exclusively" for private or family purposes

may be.

Art. 2 Para. 2 lit. c GDPR regulates that the GDPR does not apply to the processing

personal data by natural persons for the exercise of exclusively personal or

family activities. According to the prevailing view, this exception - as from the

Appellant correctly put forward - to be interpreted restrictively (cf. in particular ECJ

6.11.2003, C-101/01, on the largely identical provision of Art. 3 para. 2 second

indent of Directive 95/46/EC). After recital 18 GDPR is intended to distinguish it from a

professional or economic activity. Central criterion

for the

Applicability of the "household exemption" - and thus non-applicability of the GDPR - is the

Attributability of data processing to the private sector (cf. Heissl in Knyrim [ed.], DatKomm

Art. 2 GDPR margin no. 70, as of December 1st, 2018, rdb.at, with further references).

Likewise, the ECJ in its judgment of July 10, 2018, C-25/17, on the “budget exception” under the Directive

95/46 / EC - with reference to previous case law - pronounced that the

Expressions "personal" and "family" refer to the activity of the person providing personal data

processed and not related to the person whose data is being processed. It will only

activities that are part of the private or family life of private individuals. In this respect, one can

activity is not considered to be exclusively personal or family within the meaning of this provision,

if it concerns personal data of an unlimited number of persons

accessible, or if it extends even partially to the public space and

thereby aimed at an area outside the private sphere of the one who reads the data

processed (margin nos. 41, 42). In the said judgment, therefore, the activity of a religious community that

consisted of conducting door-to-door evangelism activities, not as among the

Household exception considered in descending order.

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These remarks

following,

is

in the present case

just mentioned

Exception clause not applicable in any case:

In his reaction to the request for information of November 4, 2019, the Respondent leads -

and later also in the present proceedings - even from the fact that he had the SMS/WhatsApp traffic

and the tape recordings solely for potential use of the data for

enforcement of his civil claims in the ongoing divorce proceedings. The

central criterion for the applicability of the "household exemption", namely the (exclusive)

Attributability to the private sector is therefore not available. Even the mixed use ("dual

use"), i.e. processing for private as well as professional or economic purposes, would in

In view of the wording of Art. 2 Para. 2 lit. c. GDPR (“exclusively”) on the applicability of the

GDPR (cf. again Heissl in Knyrim [ed.], DatKomm Art. 2 GDPR margin no. 75, as of December 1, 2018,

rdb.at, mwN).

As a result, the GDPR is applicable in the present case.

2. Regarding point 1 (right to information in accordance with Art. 15 Para. 1 and Para. 2 GDPR)

a) Basics

In accordance with Art. 15 Para. 1 GDPR, the data subject has the right to obtain a

To request confirmation as to whether personal data relating to them is being processed

and if this is the case, to obtain information about this personal data as well as

Right to the information according to lit. a to h leg. cit. According to Art. 15 Para. 3 GDPR, the

responsible for a copy of the personal data that are the subject of the processing,

to be made available to the person concerned. If the data subject submits the application electronically,

to make the information available in a commonly used electronic format, provided that nothing

states otherwise.

Basically, the respondent has the personal data processed by him

to inform the complainant, unless there are other exceptions to the right to information.

The right to a data copy according to Art. 15 Para. 3 GDPR is independent of the right

content-related information about the processed data in accordance with paragraph 1 leg. cit. (cf. Franck in Gola [ed.],

General Data Protection Regulation2 Art 15 margin no. 27).

b) Exceptions to the right to information

In this regard, the Respondent submits that, first, the rights and freedoms of the

Those responsible or third parties have a right to information and thus also a transmission

of copies of the processed personal data. Second, be too

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a restriction to protect the interest of a (even potential) litigant possible,

to civil enforcement

ensure their entitlements, and set a

Collection of evidence for the documentation of an infringement in this context

in any case represents a valid reason for a restriction. Information can also be refused

if, on the basis of full information - i.e. when the tape is handed over - the process situation of the

those responsible would be weakened. After the Respondent received the tape recording and

also the SMS correspondence with the complainant solely for a potential

Use of the data to enforce his civil claims

in the

ongoing

process divorce proceedings, a refusal to provide information is permissible in any case.

However, the BVwG has already stated that restrictions on the right to information under Art. 23

Para. 1 lit. j GDPR under the conditions of Para. 2 leg. cit. by Union legislation

or the Member States to ensure the enforcement of civil claims.

An exception - as standardized in the Federal Republic of Germany - in the event that the

Information on legal claims would be jeopardized can be found in the Austrian

Legal system, however, not (cf. finding of the BVwG of June 25, 2019, GZ W258 2187426-1).

Since the Austrian legislature has not made use of this "opening clause",

the Respondent cannot rely on this exception clause either.

At this point, for the sake of completeness, it should be mentioned that the standardized in Art. 15 Para. 4 DSGVO

Exception - which will be discussed later - is not analogous to the right to information under Art. 15

Para. 1 and Para. 2 GDPR applies:

First, the wording of paragraph 4 leg. cit. unequivocal and relates solely to

that the “right to obtain a copy under paragraph 3 (…) infringes the rights and freedoms of others

shall not impair persons (...)"; from an oversight on the part of the legislator

not to be left out.

Second, there are restrictions on the right to information under Art. 15 (1) and (2) GDPR

exclusively from Art. 23 GDPR. An analogous application of Art. 15 Para. 4 GDPR to Art. 15

Para. 1 GDPR would make Art. 23 GDPR superfluous, since due to a general clause

With the exception of the right to information, there would no longer be a need for national

to enact restrictions on the basis of Art. 23 GDPR.

Against this background, it follows that - in the absence of an exception - a right to information

can be countered - a substantive information iSd. Art. 15 para. 1 GDPR very well granted

must become.

3. Regarding point 2 (performance mandate)

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According to Section 24 (5) DSG in conjunction with Article 58 (2) (c) GDPR, the respondent was therefore in the result

ordered to provide information to the complainant.

On the one hand, this includes information on the content of the processed data in accordance with Art. 15 (1) GDPR

Personal data and, on the other hand, the meta information according to lit. a to lit. h and paragraph 2

leg.cit.

A period of four weeks seems appropriate in order to comply with the performance mandate, as there is no

There are indications that the Respondent has stored a large amount of data about the

complainant processed.

4. Re point 3 - right to secrecy

In her complaint, the complainant submits that the respondent secretly

audio recordings of conversations recorded and intended for submission to a court

of the complainant violate their basic right to secrecy according to § 1 para. 1 DSG

because the data processing is contrary to the principles for the processing of personal data

Data according to Art. 5 GDPR (in particular against good faith) and without sufficient

Reasons for justification according to Art. 6 GDPR had taken place.

§ 1 para. 1 DSG stipulates that everyone, in particular with regard to respect for his private

and family life, is entitled to confidentiality of personal data concerning him,

insofar as there is a legitimate interest in doing so. A limitation of this claim results

basically from paragraph 2 leg. cit., the GDPR and in particular the principles anchored therein

however, must be taken into account when interpreting the right to secrecy (cf

Notification of the DSB of October 31, 2018, GZ DSB-D123.076/0003-DSB/2018).

The audio recordings are undoubtedly personal data

complainant and is in principle also an interest in secrecy that deserves protection

given this personal data.

In any case, the sound recording by the respondent constitutes processing within the meaning of

Art. 4 Z 2 GDPR.

According to Section 1 (2) DSG, restrictions on the right to secrecy are only permissible if the

Use of personal data in the vital interest of the person concerned or with his

Consent is given, or in the case of overriding legitimate interests of another or

Presence of a qualified legal basis.

It is undisputed that there is no vital interest of the complainant or her consent

and nothing has been said about it.

It is therefore necessary to check whether there is a qualified legal basis or overriding legitimate

Interests of another the limitations of the right to secrecy in the subject matter

case would justify.

In this context, the OGH has already stated that the acquisition of

Evidence for a civil dispute, in principle, no legal reason for an intervention

represents the right to secrecy. In any case, secretly made recordings of conversations are then

inadmissible if they are not absolutely necessary as a result of another lack of evidence. When□
it is objected that the sound recording is absolutely necessary is a goods and□
to weigh interests. The affected legal interests are according to their general□
Importance, i.e. the “right to one’s own word” and that pursued by the illegal eavesdropper□
Claim that he wants to enforce with the help of the sound recordings, as well as the subjective interests□
to contrast both parts. It is not sufficient to assume that there is a need for justifiable evidence□
already the general interest of each party, about a particularly conclusive piece of evidence□
feature. It is incumbent on the one who invokes one of these to prove that he□
Sound recordings otherwise unenforceability of his claim needed and that his□
the claim being pursued and his subjective interests are of higher value than those attaining the□
Evidence violated privacy of the opponent (see most recently OGH 20.1.2020, 1 Ob 1/20h□
mwN.)□
In the letter dated November 4, 2019, the Respondent with regard to the disclosure of the□
Tape recordings as part of the divorce proceedings stated the following: “Should a□
If consent to the submission is not given, we will of course make a disclosure within the framework of the□
Do not carry out divorce proceedings for the time being, but under certain circumstances only after a□
carry out a detailed interrogation of your wife client over several months in a suitable way."□
From this sentence alone it follows that the tape recordings of the Respondent evidently□
are not absolutely necessary. If there had actually been another lack of evidence,□
then the submission would not be made dependent on consent or the hearing of the□
wait for the respondent.□
A lack of evidence on the part of the respondent is therefore objective for the data protection authority□
not recognizable and a weighing of goods and interests was therefore not to be carried out. the□
Data Protection Authority therefore comes to the conclusion that the secretly prepared□
Recordings of conversations were in any case inadmissible due to a lack of evidence.□
According to the verdict, a violation of the right to secrecy was found.□

5. Re point 4 - right to receive a copy of the data

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According to the findings, the appellant sought from the appellant under Article 15

Paragraph 3 GDPR

a) all e-mails from the account ursula@a***.at

b) all contacts stored for this account and

c) all made by the Respondent without the knowledge of the Appellant

tape recordings

With regard to data copies according to Art. 15 Para. 3, it should be noted that there is no entitlement to the release

entire documents (and therefore not to the publication of entire tape recordings or

SMS/WhatsApp history) consists of:

The data protection authority, with reference to recital 63 and the judgment of the ECJ of July 17

2014, YS et al., C-141/12 and C-372/12, already stated that Art. 15 Para. 3 GDPR

not entitled to a copy of documents containing personal data

Contain information seeker, derive

leaves

(cf. notice

from November 13, 2019,

GZ: DSB-D062.268/0001-DSB/2019). With reference to Art. 15 Para. 3 GDPR it is not

possible to demand the surrender of entire documents, they may also contain personal data

of an information seeker appear (cf. in this sense also the judgment of the BG for commercial matters

Vienna 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 receive a “copy of the personal

Data subject to processing”.

Based on this, based on Art. 15 Para. 3 GDPR, the surrender

of e-mails, contact lists and sound recordings, as this is the wording of these

Provision – unlike Art. 20 Para. 1 GDPR – cannot be inferred.

The complainant's request in this regard is therefore not justified.

Accordingly, this complaint was to be dismissed.