

GZ: DSB-D122.970/0004-DSB/2019 from November 8th, 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 the data protection complaint of the Roland A***□

(complainant) from **** V***stadt of June 4, 2018 (in the version of□

Correction of defects from June 7, 2018) against N*** Online-Services Gesellschaft mbH &□

Co KG (respondent) from **** D***stadt, represented by R*** T***□

Lawyers Ges.m.b.H. from **** B***, due to violation of the right to erasure in□

Consecutive denial of the complainant's request for erasure dated May 26, 2018□

his data by communication dated June 4, 2018 as follows:□

1. The complaint will be followed up and it will be established that□

the Respondent thereby revoked the Complainant's right□

Deletion has violated that it submitted his request for deletion of the□

"unique identifier" "Petra" + "j***@***isp.at" designated user profile dated□

May 28, 2018 and instead accompanied the complainant□

email dated June 4, 2018 asking to fill out a form and doing so□

to disclose his full name and address data as well as information□

to previous contacts ("customer number, numbers of previous procedures,□

Personnel number or similar") or unspecified□

"Documentation" to certify his identity.□

2. The complainant is instructed to respond within a period of□

two weeks, otherwise execution by the "unique identifier" "Petra" +□

"j***@***isp.at" designated user profile with all related□

to delete stored data.□

Legal basis: Art. 4 nos. 1, 2 and 5, Art. 11 para. 1 and 2, Art. 12 para. 2, Art. 17 para. 1□

and Article 58(2)(c) of REGULATION (EU) 2016/679 OF THE EUROPEAN□

PARLIAMENTS AND COUNCIL of April 27, 2016 on the protection of natural persons□

in the processing of personal data, the free movement of data and□

Repeal of Directive 95/46/EC (General Data Protection Regulation), OJ. L 119 dated□

May 4th, 2016, pp. 1-88 as amended (hereinafter abbreviated to GDPR), in conjunction with Section 24 (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.□

In his complaint of June 4, 2018 (improved after the order to remedy the defect□

Data Protection Authority by supplement of June 7, 2018) brought the complainant□

alleges that the Respondent is aggravating (and violating) his right to erasure in□

unreasonable by the fact that they were carried out before the performance by him on May 26, 2018□

deletion of his data requested by e-mail by reply letter dated June 4, 2018□

proof of identity by filling out and signing a comprehensive□

requested the form. The reason for this can be assumed that the□

The Respondent strives to keep as large a database as possible.□

2. The Respondent, represented by R*** T*** Rechtsanwälte Ges.m.b.H. out□

B***, in its statement dated June 25, 2018, submitted that it operates a□

Classifieds portal with more than 4 million users. To register as a user□

only a first name and an e-mail address are required. Both□

Data would be used in combination as a "unique identifier". The Complainant□

now only have the surname "A****" and

the e-mail address "j***@***isp.at". This email address is in the

corresponding data processing of the Respondent, however, neither with the

Surname "A****", still with the first name "Roland", but with the first name

"Petra" linked. Therefore, there are reasonable doubts as to the identity of the current

complainant with the user whose data he had requested to be deleted,

passed. For this reason, the Respondent was entitled to

to request proof of identity in the required form. reason for this approach

is not the attempt to be able to identify the highest possible number of users, but

To prevent interference with the rights of third parties, whereupon the latter one the complainant

also pointed out. The chosen approach corresponds to both

DSG 2000 as well as the DSGVO. An automatic one is planned for the future

Implement deletion procedures that are registered and logged in users

will enable you to carry out the deletion yourself via a "Privacy Dashboard".

3. After hearing the parties' submissions, the Respondent replied

Complainant (here in his relevant email, like all des

complainant sent from the e-mail address "j***@***isp.at",

signifying as "Petra and Roland A****") in his statement of July 7, 2018

The following: The e-mail address used was registered in the name of Roland A***

and am used by him and his wife Petra. "For reasons of

Data protection" was on the occasion of registering as a user with the respondent

the name "Petra" has been given. The Respondent demands

unjustified when deleting data a "specification of identity", which

when registering (or when requesting a

new password) had been neglected. He would have been ready at any time

give his wife's first name or the password used, which was used by the

Respondent requested proof of identity by sending a form□

with a handwritten signature is even less suitable in comparison,□

Dispel doubts about his identity with the authorized user.□

B. Subject of complaint:□

4. The subject of the complaint is the question of whether the Respondent is enforcing the□

Complainant rightly requested deletion of his user data from a□

Proof of identity in the form of sending a personally signed document□

form with disclosure of, among other things, name and address data□

has, or whether the complainant thereby complies with his right to erasure□

Art. 17 GDPR has been violated.□

C. Findings of fact:□

5. The Respondent, a company headquartered in Austria (**** D***stadt)□

established and organized in the legal form of a limited partnership□

Company (entered in the company register by the ****court **** D***stadt to FN 3*2*4*r),□

operates an online classifieds portal ("[Editor's note: quoted□

Self-designation of the Respondent for reasons of pseudonymization□

removed]"), which is accessible at the URL https://www.n***.at.□

Evidence assessment: These findings are based on the credible and□

undisputed statements of the Respondent, the publicly accessible□

Company register and calling up the Respondent's website (last on□

November 8, 2019), in particular the data protection declaration accessible there□

(https://www.n***.at/datenschutzerklaerung).□

6. The complainant is with the respondent as a user (owner of a□

accounts) registered. The registration took place according to the then as now valid□

General Terms and Conditions of the Respondent (version of 07.07.2011□

https://www.n***.at/agb) and in accordance with the decision at the current time□

applicable data protection declaration (from August 2019, □

https://www.n***.at/datenschutzerklaerung; Point 2.2.1.: "Mandatory information is only □

First name and e-mail address"), at an unknown time online without □

Provision of proof of identity by providing the first name "Petra" (es □

is the first name of the applicant's spouse) and with the e- □

Mail address "j***@***isp.at". Furthermore, the complainant □

Gender information "female", a telephone number as well as postal code and place of residence □

voluntarily stored in the user profile associated with the account. first name and e- □

E-mail addresses serve as a "unique identifier" to check the authorization via □

to dispose of the account. □

Evidence assessment: As before with regard to that set up by the Respondent □

legal framework; for the rest, the findings are based on credible ones □

and undisputed information provided by the complainant and submitted by him □

Documents (printout of the user profile, attachment to the statement of 7/7/2018). the □

Statement on the use of data as a "unique identifier" are based on the □

Submissions of the Respondent in the statement of June 25, 2018, □

Entry piece in GZ: DSB-D122.970/0003-DSB/2018. □

7. On May 28, 2018, the complainant decided to have the data of his □

Delete accounts and user profiles. The possibility of an online self □

deletion to be carried out was not available. Instead, the □

Respondent downloaded one from the website of the data protection authority □

originating form (designation: "Application to the person responsible for the right to □

Deletion Art.17.pdf"). This form looked through proof of identity □

Provide full name and address details and details of previous ones □

Contacts ("customer number, numbers from previous procedures, personnel number or □

comparable") or the submission of unspecified "documents". □

Evidence assessment: As before, the cited form was attached to the complaint□

dated June 4, 2018.□

8. The complainant then sent the following message from the e-mail on May 28, 2018□

Mail address "j***@***isp.at" to the e-mail address "datenschutz@n***.at".□

Respondent:□

"Good day,□

either you delete my data immediately and inform me about it, or□

I am forced to contact the data protection officer. This from□

The law does not provide for any hurdle set up for them. But you're welcome to□

come by and verify my identity.□

A***" (formatting not reproduced 1:1)□

9. The Respondent replied by email on June 4, 2018 as follows:□

"Clara (N*** data protection)□

June 4, 07:54 CEST□

Dear N*** user,□

Thanks for your message.□

Since only the data subject who is to be deleted by the personal□

Data is identified or identifiable, entitled and we a□

If you want to avoid abusive exercise of your rights, we ask you to let us know□

fill out the attached form and send it to us.□

Of course, this data will be treated confidentially and for no one else□

Purposes used as identification and documentation of deletion.□

We ask you to consider that with this profile deletion all your data□

be irrevocably deleted, and we only request deletion of the to be deleted□

email address can be accepted.□

By submitting the above form, you assure us that you□

have the authority to request deletion of the account in question.□

If you have any further questions do not hesitate to contact us.□

Kind regards,□

N*** Privacy Team□

Attachments□

Request to the person responsible Right to erasure Art 17.pdf" (formatting not□

reproduced 1:1)□

10. In response, the complainant the same day the subject□

Complaint filed for violation of his right to erasure.□

Evidence assessment: As before and the content of under ZI. DSB-D122.970□

documented administrative files of the data protection authority; the quoted email exchange□

comes from the attachments to the complaint of June 4, 2018.□

D. In legal terms it follows that:□

Total:□

11. The complaint has proved to be justified.□

Applicable law:□

12. Since the facts to be examined here, starting with the request of□

Complainant after the deletion of his data on May 28, 2018, in full□

occurred on May 25, 2018, according to Art. 99 Para. 2 DSGVO, this regulation of the□

Union law and, in accordance with § 69 (7) DSG, the DSG in the version of Federal Law Gazette I□

No. 24/2018 to be applied.□

13. For questions of verification and proof of the identity of a data subject□

The following provisions of the GDPR apply to the exercise of their rights:□

"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");

a natural person is considered to be identifiable who, directly or indirectly,

in particular by means of assignment to an identifier such as a name, to a

identification number, to location data, to an online identifier or to a or

several special characteristics that express the physical, physiological,

genetic, psychological, economic, cultural or social identity

that natural person can be identified;

2. "Processing" any carried out with or without the aid of automated procedures

Process or any such series of processes in connection with

personal data such as the collection, recording, organization,

Arranging, storing, adapting or changing, reading out, that

query, use, disclosure by transmission, dissemination or

any other form of provision, matching or linking that

restriction, deletion or destruction;

3. "Restriction of processing" [...];

4. "profiling" [...];

5. "Pseudonymisation" means the processing of personal data in a way

that the personal data without consulting additional

Information is no longer associated with a specific data subject

can be provided that this additional information is kept separately

are subject to technical and organizational measures that

ensure that the personal data are not of an identified or

assigned to an identifiable natural person; [...]"

"Article 11

Processing that does not require identification of the data subject

is required□

(1) Is for the purposes for which a controller personal data□

processed, the identification of the data subject by the controller□

not or no longer required, the latter is not obliged to the mere□

Obtain additional information to maintain compliance with this regulation□

or to process in order to identify the data subject.□

(2) In cases referred to in paragraph 1 of this article, the person responsible may□

prove that he is unable to identify the data subject, so□

he informs the person concerned about this, if possible. In these cases find□

Articles 15 to 20 do not apply unless the data subject provides□

additional information to exercise their rights under these Articles□

ready to enable their identification."□

"Article 12□

Transparent information, communication and modalities for exercise□

the□

rights of the data subject□

(1) [...]□

(2) The person responsible makes it easier for the data subject to exercise their□

Rights under Articles 15 to 22. In the cases referred to in Article 11(2).□

the person responsible may refuse only on the basis of the request of the persons concerned□

person to exercise their rights under Articles 15 to 22□

if he makes it credible that he is unable to contact the person concerned□

to identify. [...]"□

Applied to the established facts, it follows that:□

14. It is certain that the Respondent in accordance with Art. 4 Z 1 and 2 DSGVO data of□

complainant processed. The complainant as user (and□

Customer of the Respondent) himself in the data processing of

entered into the (online) system serving the respondent.

15. Since the Respondent, on the occasion of the processing of the data of the

complainant had no intention of identifying the complainant

means the existence and legal identity (conformity) of

Complainant as a natural person (cf. § 16 ABGB, Art. 4 Z 5 DSGVO speaks

also from a "specific data subject") with the created user profile

to check the "online person" shown and corresponding data (e.g.

full name details, date of birth or a verifiable home address)

to save, were pseudonymised from the point of view of the Respondent from the beginning

Data according to Art. 4 Z 5 GDPR. It would have been conceivable that the

identify complainants by collecting additional data that

Respondent has it, however, what from the point of view of the data protection authority

what is crucial is its users as the data subjects of the processing

expressly free to create pseudonymous user profiles by registering with the

Registration did not require any proof of identity. The Respondent has

from the beginning within the meaning of Art. 11 Para. 1 DSGVO on an identification of the

Complainant as a specific data subject is waived. The Complainant

was for them up to the time of the request for deletion, so to speak, only one

Pseudonym, a first name and an e-mail address in their user database.

16. Pursuant to Art. 12 (2) GDPR, the Respondent [editor's note: im

Original as a result of an editorial error "complainant"] the express

Obligation to make it easier for the data subject to exercise the right to erasure, among other things.

The data subject may only be identified to the extent that they

is necessary to verify the entitlement to exercise the right to erasure.

In the present case, the requested deletion of a pseudonymous

user profile, the stored profile data can be used. A pseudonymous user can, for example, through knowledge of the login data (user ID, password), through information to the stored data content of the profile or through the proven

Power of disposal over the mailbox, their e-mail address at the time of registration

has been specified. New data (such as first name, surname,

Home address, a copy of an ID card or a graphic image of a handwritten one

Signature) do not have to be collected for this reason (cf. Art. 11 Para. 1

GDPR). Incidentally, these would be used for the intended purpose of identity verification

not suitable, since no comparative data is stored by the respondent,

whose identity (correspondence) is checked against the newly collected data

could. The complainant rightly pointed this out.

17. In the event of a complaint, the complainant would have, for example, through the respondent

may be requested to both parts of the Respondent so

designated "unique identifier", i.e. first name and registered e-mail address

to name.

18. The fact that the Respondent is not satisfied with that, but on the

Filling out an extensive form (which is based on the normal case of processing the

data of identified, non-pseudonymous natural persons) existed,

it has the complainant in his right to erasure according to Art. 12 para. 2 in connection with

Art. 17 para. 1 GDPR violated. This was according to § 24 paragraph 5 sentence 1 DSG

to determine [Editor's note: in the original as a result of an editorial error

"§ 25 Para. 1 1st sentence DSG"].

19. Pursuant to Art. 58 Para. 2 lit c GDPR in conjunction with Section 24 Para. 5 2nd sentence DSG

To further instruct the Respondent to delete the user profile with the data

to be carried out by the complainant. It was to be taken into account that the

Complainant has already proved in the course of the proceedings that both

Part of the "unique identifier" are known, so no corresponding condition ☐

put was. A period of two weeks seems appropriate and sufficient ☐

a simple data processing operation such as deleting a user profile ☐

to perform. ☐