

GZ: 2020-0.816.655 from January 7, 2021 (case number: DSB-D124.2399)□

[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 Brigitte A***'s data protection complaint□

(complainant) of January 24, 2020 (received on January 29, 2020), supplemented on□

February 28, 2020, against N*** & Co Material GmbH (respondent).□

Violation of the right to information as follows:□

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

Respondent has breached its information obligations by□

has not provided any information about the legal basis for data processing.□

2. The Respondent is instructed to respond within a period of 4 weeks□

other execution of the complainant□

Information about the□

Legal basis for the processing of personal data in□

within the meaning of Article 14 (1) (c) GDPR.□

3. Otherwise the complaint is dismissed as unfounded.□

Legal basis: Art. 3, Art. 4 Z 16, Art. 12 Para. 1, Art. 14 Para. 1 to Para. 5, Art. 15, 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; §§ 18 paragraph 1□

as well as 24 paragraph 1, paragraph 5 and paragraph 6 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999

idgF; Article 8 paragraph 1 of the Federal Constitutional Law (B-VG), Federal Law Gazette No. 1/1930 as amended.□

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

REASON□

1. With submission of January 24, 2020 (ha. arrived on January 29, 2020), supplemented with submission□
of February 28, 2020, the applicant alleged a violation of the right to□
information and summarized it as follows:□

On January 17, 2020, the complainant received a letter (dated January 8, 2020)□
received from the Respondent, with which she was informed that her□
Windows purchased in 2019 may have faulty hardware and they themselves□
should therefore contact a call center for verification. As a result, on January 21□
2020 contacted the manufacturer and the seller of the windows, the latter sending her a scan□
submitted to the Respondent's request. The Respondent's letter to□
the seller of the windows is dated August 8, 2019, the Respondent's letter to the□
Complainant, on the other hand, dated January 8, 2020 (received on January 17, 2020). this□
means that the Respondent processed her data for around 5 months without her□
to inform about it. Furthermore, the letter does not comply with the provisions of Article 14□
GDPR. The input was the letter dated January 8, 2020 and the letter dated□
8 August 2019 (both in Polish) attached in copy.□

2. With the completion of the data protection authority on February 18, 2020, the□
Complainant on the possibility of lodging a complaint with the supervisory authority□
their usual place of residence. This was confirmed by the complainant□
rejected with submission of February 28, 2020.□

3. With the settlement dated March 3, 2020, the data protection authority requested the respondent□
for comment.□

4. On March 24, 2020, the Respondent sent the Appellant an as□
"Providing information according to Art. 15 GDPR" letter, which is also a copy to□
sent to the data protection authority.□

5. On April 17, 2020, the data protection authority dismissed the respondent□

reiterates that the subject matter of the complaint proceedings is an alleged infringement□

in the right to information, but not in the right to information and a subsequent□

Elimination according to § 24 Para. 6 DSG consequently the specifications of Art. 13 or 14 DSGVO□

must correspond. On the part of the Respondent, however, no further action was taken□

Opinion.□

6. With the settlement of October 23, 2020 and December 1, 2020, the□

Complainant's data protection authority.□

7. By submission of December 7, 2020, the complainant submitted that all□

Paper letters from the Respondent in Polish, the information from March 24, 2020□

however, were (erroneously) written in German.□

B. Subject of Complaint□

The subject of the complaint is whether the respondent is the complainant□

thereby violated their right under Art. 14 GDPR by complying with the information obligation□

has not sufficiently complied with the collection of the personal data and□

did not remedy this deficiency even during the proceedings before the data protection authority.□

C. Findings of Facts□

1. The Respondent is registered for FN 3***45n□

Company based in *020 M***, Z***gasse 5, whose corporate purpose includes the□

Manufacture of window fittings.□

Evidence assessment: The findings made are based on an official query□

of the company register (FN 3***45n) and the Respondent's website at□

https://www.material*.eu, both accessed on January 4, 2021.□

2. On January 17, 2020, the complainant received a letter from the□

Respondent, which was dated January 8, 2020. The content of the letter was□

Essentially, the information that the complainant previously from the□

Windows purchased from Company "E****" may have faulty hardware.□

The letter was written in Polish.□

3. The contact details of the complainant required for the request (name and□

Residential address) were given to the Respondent on the basis of a request in this regard dated□

Submitted August 8, 2019 by company "E****". Apart from that, existed□

between the Complainant and the Respondent at no time□

contractual relationship.□

4. With submission of January 24, 2020 (received by the data protection authority on January 29□

2020) the complainant raised the complaint in question. Thereupon the□

Respondent on March 23, 2020 in the ongoing appeal proceedings the following□

Write to the complainant, copying this also to the data protection authority□

was transmitted (formatting not reproduced 1:1):□

March 23, 2020□

Provision of information in accordance with Art. 15 GDPR□

Ms A***,□

we respond to your request for information about the data stored about you within the□

data protection authority from receipt of the application by us as follows:□

Your request for information in accordance with Art. 15 GDPR or your data protection complaint with the data protection authority□

we received it on March 19, 2020. We assume that you have sufficiently verified your identity with the□

data protection authority have proven.□

We hereby respond to your request within the period of two weeks set by the data protection authority□

after.□

In order to respond to your request, we have established the following regulations to protect the rights of third parties□

the information is based on:□

- To protect the rights of third parties, confidentiality in the context of ongoing investigations in criminal or□

Civil law proceedings and the protection of trade and business secrets are affected□

Documentation, drawings, software code, notes, reports, annotations, logs, expert opinions or

general data sets related to the information requester used for identification,

Logging or traceability of facts are used and data of the

Information requesters include, not disclosed, not disclosed in machine-readable form and it

no copy of the data will be provided either.

- In general, this also applies if a document or a data record contains other information in addition to the person requesting information

natural persons are named whose personal rights are to be protected within the meaning of the GDPR

these are not disclosed, not passed on in machine-readable form or no copy of the data

provided.

- Temporary data and log files generated by the system, overwritten again or only for

Administration purposes and for reasons of reliability and operational security of the IT systems

are and process direct or indirect (IP addresses) data with personal reference, are shared by

specific IT applications processed. We ask for your understanding that we require information on a temporary basis

data or log files cannot be fulfilled due to the excessive nature of the request.

Taking into account the protection of the rights of third parties, we disclose the following data about you:

We process your personal data within the following groups of data subjects:

Categories of data subjects Description

- Customers (B2C)

consumer

We carry out the following processing activities for the data subjects listed above:

processing activities

purpose of processing

Complaints processing

end customer

organize and provide a process,

to process customer-related complaints

to be able to ☐

categories ☐

affected ☐

persons ☐

Customers (B2C) ☐

The following categories of personal data are used in the processing activities listed ☐

processed: ☐

Report: GDPR - request for information according to Art. 15 (letter); Catalogue: CURRENT ☐

Categories of personal species ☐

data from data ☐

Customer data for complaints Name, address, salutation, e-mail ☐

address, phone number ☐

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Printed on 03/23/2020 ☐

CONFIDENTIAL *** ☐

processing activities ☐

Complaints processing ☐

end customer ☐

As part of the activities we carry out, we transmit personal data that you ☐

relevant groups of affected persons, to the following recipients or categories of recipients: ☐

types of data ☐

purpose of transmission ☐

recipient ☐

complaint data ☐

service provider to ☐

Troubleshooting ☐

Execution of service for ☐

Fulfillment of product liability claims, ☐

warranty or guarantee. ☐

We store your personal data for as long as required by law for the purpose ☐

is necessary or the use corresponds to the legitimate interest of the company ☐

requires. The deletion period listed below applies to this storage period. ☐

In addition, the origin of the respective data is indicated. ☐

Categories of personal storage duration ☐

Data ☐

Customer data for complaints 10 years ☐

1 year ☐

deletion period ☐

origin of the data ☐

of ☐

through ☐

of ☐

or ☐

self-disclosure ☐

customers ☐

data transmission ☐

suppliers to ☐

end customers (e.g. ☐

traders, builders ☐

window builder). ☐

For subsequent processing, we use automated procedures for operational reasons ☐

Decision-making / profiling based on the data collection logic described below ☐

based.□

processing activities□

profiling logic□

At this point we confirm that we, taking into account the property rights of third parties□

We do not process any of your personal data beyond the data disclosed.□

In the previous section we have explained to you which data types or categories of data we use□

for which processing activities also for which purposes and legal bases for you□

process the affected groups. To you also, if desired, a copy of the for you□

To give processed data, we ask you to specify the data in question that you have in the form□

request a data extract.□

In principle, you have the right to correction, deletion, restriction of processing and revocation□

and contradiction to. For this, please contact us. If you believe that the processing of your data□

violates data protection law or your data protection claims in any other way□

have been violated, you have the right to lodge a complaint with the responsible data protection authority.□

Regards,□

The Material* Legal Department□

Evidence assessment: The statements made are primarily based on the insofar□

credible submissions of the Appellant than that of the Respondent□

despite (repeated) requests for a statement, the content was not disputed at any time□

would.□

D. In legal terms it follows that:□

D.1. General and Relevant Legislation□

At the beginning it is stated that the responsibility is based on the head office of the□

Respondent□

(Art. 4 Z 16□

lit. a GDPR)□

in Austria, where the

complaint directly to the Austrian data protection authority

was brought in and consequently by it (without applying the one-stop-shop procedure

according to Art. 56 in conjunction with Art. 60 GDPR).

In accordance with Art. 12 Para. 1 GDPR, the person responsible takes appropriate measures to

data subject all information pursuant to Art. 13 and 14 relating to the processing

obtain, in a concise, transparent, understandable and easily accessible form in one

communicate in clear and simple language.

If personal data is not collected from the data subject himself,

The obligation to provide information arises from Art. 14 GDPR, according to which, in accordance with Para. 1 leg. cit. the following

Information to be given is:

a) Name and contact details of the person responsible;

b) contact details of the data protection officer;

c) the processing purposes and the legal basis for the processing;

d) the categories of data processed;

e) where applicable, the recipients or categories of recipients;

f) where applicable, the intention of the person responsible to transfer the personal data to a

Recipients in a third country or an international organization.

In addition, the person responsible for the data subject pursuant to paragraph 2 leg. cit.

the following information is available to the data subject

to ensure fair and transparent processing towards:

a) the storage period or, if this is not possible, the criteria for determining this

Length of time;

b) where applicable, the legitimate interests pursued by the controller;

c) the existence of the right to information, to correction, to deletion, to restriction

processing, data portability and objection to processing;

d) the existence of a right to withdraw consent at any time without the

The legality of the processing carried out on the basis of the consent until the revocation is affected
will;

e) the existence of a right of appeal to a supervisory authority;

f) the source of the data and, if applicable, whether they come from publicly available sources;

g) where applicable, the existence of automated decision-making including
profiling.

The above information is in principle within a reasonable time,

but no longer than within one month. If the personal data for

communication with the data subject should be used no later than

Time of the first notification (Art. 14 para. 3 lit. a and b GDPR).

Art. 14 para. 1 to 4 GDPR do not apply, however, if and to the extent that the data subject
person already has the information (para. 5 leg. cit.).

According to § 24 para. 6 DSG, a respondent can proceed until the end of the procedure
the data protection authority subsequently eliminate the alleged infringement by
complies with the complainant's requests.

D.2. In the matter

The data protection authority has already dealt with the question of whether the "information requirements" according to

Conversely, Art. 13 and Art. 14 GDPR are also asserted as subjective data subject rights

can be discussed and, according to stRsp, assumes that a

data subject can rely on Art. 13 and Art. 14 GDPR regardless of the application (cf. the

Decision of the data protection authority of October 31, 2018, GZ DSB-D123.076/0003-
DSB/2018).

The prerequisite for the application of Art. 14 GDPR is that the person responsible

did not collect personal data from the data subject

(none

“direct survey”). As can be seen from the statements□

is, were undoubtedly□

personal data of the complainant (at least name and address)□

requested by the Respondent for the purpose of contacting a third party□

and thus "collected" in the sense of the quoted provision.□

The information mentioned would be at the latest at the time of the first notification -□

thus on the occasion of the letter of January 8, 2020 - to be granted (cf. Art. 14 para. 3□

lit. b leg. cit.). A right to be determined that certain information may not be□

The time of the cases standardized in Art. 14 Para. 3 GDPR exists according to permanent□

However, the case law of the data protection authority does not (cf. the analogous application of § 24□

Para. 6 DSG with regard to the information obligations of Art. 13 f DSGVO the decision of the DSB□

from August 22, 2020, GZ: DSB-D130.206/0006-DSB/2019).□

Against this background, the subsequent correspondence within the meaning of § 24□

Para. 6 DSG in more detail:□

The data protection authority does not overlook the fact that there is a violation of the law□

for information in accordance with Art. 14 - and not, as the Respondent believes, in the law□

for information in accordance with Art. 15 GDPR - was claimed. However, Art. 14 para. 1 to 4□

GDPR does not apply if the complainant has the relevant□

information already available. Moreover, it should be noted that the success of a□

Complaint according to Art. 77 Para. 1 in connection with § 24 Para. 1 DSG in any case to the requirement□

is linked that there is also a concrete complaint (cf. on the lack of a subjective□

Violation of rights such as VwSlg. 11,568 A/1984 mwN).□

As a result, this means that the information obligations are also met through the provision of information□

within the meaning of Art. 15 GDPR could be fulfilled.□

As can be seen from the findings, the Respondent granted in the current□

Proceedings before the Data Protection Authority Information on the processing purposes that□

processed data categories and the storage period. It is also clear who is objective□

The person responsible for data processing is and has been sufficiently informed about the rights of those affected□

and the right to lodge a complaint with a supervisory authority. Regarding these points□

there is therefore a subsequent correspondence within the meaning of Section 24 (6) DSG and was the□

Complaint in this regard to be dismissed for lack of complaint.□

However, Art. 14 (1) (c) GDPR expressly provides that the information obligations in addition to□

the processing purposes also include the legal basis of the processing. the□

Complaint was therefore□

to be granted on this point and a corresponding□

to issue a performance order.□

During the concluding hearing of the parties, the complainant submitted that her□

information provided was not translated into their national language (Polish).□

The complainant is to be agreed to the extent that information within the meaning of□

transparency requirement are to be issued in understandable and simple language. One□

This may expressly stipulate in which national language this is to be done□

Provision, however, cannot be taken and is therefore based on the respective individual case□

turn off Due to the market location principle inherent in the GDPR, it can be assumed that□

to translate information and communications into the languages of those countries□

are,□

in which the entrepreneur offers the services in question, whereby the□

nationality or place of residence of the person concerned must be taken into account (cf.□

Paal in Paal/Pauly, General Data Protection Regulation (2017), para. 35). Given the relative□

general wording of Art. 12 leg. cit. as well as the fact that it is at□

Article 14 leg. cit. is an active commitment, but it is also of a certain nature□

scope of decision□

respective responsible parties (cf. baker□

in□

Kühling/Buchner, General Data Protection Regulation (2017), para. 16).□

It should be noted that the complainant, the present complaint□

directly at the Austrian data protection authority - despite the reference to the one-□

Stop shop procedures and the associated possibility of appeal to the Polish□

To raise supervisory authority - raised and the subsequent procedure in German□

was led. At no time did the complainant claim that she□

given information (linguistic) could not grasp. Finally, it should be noted□

that only a submission written in German by the Respondent□

Review of the data protection authority within the meaning of § 24 para. 6 DSG enabled (cf. Art. 8□

B-VG, according to which the German language must be used by Austrian authorities□

is).□

From the point of view of the Respondent was therefore of a sufficiently understandable□

Information within the meaning of Art. 12 Para. 1 in connection with Art. 14 GDPR and was the□

dismiss the complaint in this regard.□

It was therefore to be decided accordingly.□