

GZ: DSB-D122.895/0005-DSB/2018 from 20.11.2018□

[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 Ms. Johanna's data protection complaint□

A*** (complainant) of April 3, 2018 against the Federal Ministry of Finance,□

Human Resources Tax Office N***-M*** (Respondent) for violation of law□

for correction as follows:□

~ The appeal is dismissed.□

Legal basis: Art. 16, Art. 57 (1) lit. f and Art. 77 (1) of the Regulation (EU)□

2016/679 (General Data Protection Regulation - GDPR), OJ No. L 119, p. 1; §§ 24, 30□

Paragraph 4 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□

With a complaint dated April 3, 2018 according to § 31 DSG 2000, Federal Law Gazette I No. 165/1999 as amended by Federal

No. 83/2013, because of an alleged violation of the right to rectification (§ 27□

DSG 2000) the complainant submitted as follows: She was an employee of the□

Respondent. The tax office N***-M*** - this has as a personnel department□

Employer responsibility for contract employees working in this area and all with it□

associated tasks - keep an electronic personnel file for employees.□

On 4 July 2017, the complainant reported to her line manager, Mr□

Mag. P***, reported sick in M***. On July 7, 2017, the complainant□

in accordance with usual practice, a copy of the sick leave enveloped in the □

P.O. Box of the organization at location N*** inserted. That would have □

Appellant to the established procedure in the event of sick leave □

held. This also applies to the extension of sick leave, which is □

complainant on July 11, 2017 again placed in the same mailbox □

may be. On the same day she had a letter from the Respondent, dated □

received on July 11, 2017, according to which she was accused of breaching official duties, □

because she would not have properly certified the sick leave. In addition, would have □

the complainant found out that a termination by the □

Employer was intended and in this regard a notification to the □

Disability Committee had taken place. The service committee was about the intended □

I was informed of the termination by letter dated July 11, 2017 □

however not agreed. In a letter dated July 25, 2017, I refrained from giving notice □

been taken. □

The complainant acted in accordance with the law at all times. she has □

report the sick leave to their superior over the phone □

reported start of work. In addition, she has her sick leave within □

three days in writing in the form of a sick note. There is none □

General certification obligation, this only has to be done if the □

Employer request the employee to submit such. □

Now it can be seen from the electronic personnel file that against the □

Complainant would have initiated dismissal proceedings, of which □

further consequences had been refrained from, in addition, there were minutes of talks □

exist, which would relate to the incident in question, but is □

It cannot be inferred from the personnel file that, after the facts had been clarified, □

that the complainant had committed no breach of duty. □

In this regard, on October 22, 2017, the complainant's representative had
further letter addressed to the Respondent and the correction of the
Events surrounding the dismissal requested in the complainant's personal file.
The Respondent would have responded to this by letter dated December 18, 2017
reacted, where it was only communicated that all processes relevant to employment law
and documents were recorded in the complainant's personal file. Further could
Nor can it be inferred from this part of the file that the complainant "currently"
breach of duty is alleged. It wasn't necessary
Notification of the possibility of termination of employment
termination by the employer and it is documented anyway that
was withdrawn from this measure.
This letter from the Respondent would not have met the requirements of a
Correction met, whereupon the representative of the complainant again
sent a letter for the purpose of correct correction.
From the Respondent's letter of December 18, 2017, only go
out that the complainant is currently no breach of duty
is to be accused, but it cannot be inferred from this letter that
no breach of duty had previously been committed by the complainant.
The Respondent responded to this in a letter dated January 31, 2018,
in which a further correction was rejected.
The complainant feels that her right has been violated
recorded personal data do not correspond to the actual events, because
in the electronic personnel file, in which the data of the employee is recorded
would, although it was clear that a termination procedure due to a
Breach of duty had been initiated, but cannot be inferred from this
could that the complainant actually committed no breach of duty

have.□

The complainant therefore has the right to rectification of her□

personal data in the electronic personnel file. The eight-week period is□

expired (application dated October 22, 2017), and the Respondent would also have□

Letter dated January 31, 2018 stated not to carry out the correction□

want. It may, with the decision, violate the right to rectification□

complainant to be identified.□

The Respondent replied with a statement dated May 25, 2018. The□

Appellant would have been on sick leave from July 4, 2017. She would have□

reported to her superior by phone, but the exchange line or the□

No medical confirmation was presented to supervisors by July 11, 2017. Because of this□

Circumstances and with regard to the imperative enshrined in labor law□

the tax office N***-M*** on July 11, 2017 the service committee and the□

Committee for the Disabled at the Federal Social Welfare Office in Styria about the intention of the□

Personnel department informed, the employment relationship with the complainant acc.□

§ 32 paragraph 2 line 1 in conjunction with § 7 VBG subject to the notice period in accordance with § 33 VBG□

cancel.□

On July 12, 2017, in the area of the tax office N***-M***, there was an envelope with the inscription□

"Organization" found, in which a medical certificate of the□

Respondent who confirmed incapacity to work from July 4, 2017□

had. Therefore, both the Service Committee and the Disability Committee□

been informed on July 25, 2017 that the intended termination of□

complainant will be refrained from.□

After electronic inspection of the personal file of the complainant□

their legal representatives with letters dated November 22, 2017 and January 18, 2018□

requested to document in the personnel file that no misconduct or no□

her client's breach of duty would exist. By email dated December 18th□

In 2017, the respondent informed the complainant that within□

the keeping of a personnel file for each employee all personnel-related□

Processes together with the associated papers and documents are to be recorded. to□

the service law addressed with the legal representatives of the complainant□

Transactions had been informed that these were complete in the electronic personnel file□

are recorded and documented.□

In this context, the complainant's legal representatives were expressly informed□

been informed that it could not be inferred from these parts of the file that their□

The client could currently be accused of breach of duty.□

Furthermore, that this message, as well as the submissions written by the legal representatives□

from November 22, 2017 or from December 14, 2017 in the electronic personnel file□

complainant would be recorded.□

In an email dated January 31, 2018, the Respondent pointed out that□

from the point of view of the complainant, the facts raised by her are detailed and□

is documented with the necessary clarity in the personnel file of the named employees□

and no need to make supplements is recognized.□

In its statement of April 3, 2018, the Respondent further stated that□

for employees of the Federal Finance Administration, the personnel files since 2009□

were kept in electronic form only. All of the□

The facts recorded in the present complaint are correct and complete in□

electronic personnel file of the complainant recorded.□

According to Grünanger/Goricnik, employee data protection and employee control, 2014,□

p. 255, the digital personnel file is defined as follows: "Personnel files are a□

Collection of deeds and documented processes, the personal and□

relate to the official circumstances of an employee and those in an inner□

related to the employment relationship. They should be as complete as possible□

give a truthful and accurate picture of these circumstances.”□

The Respondent has the quoted definition regarding the management of□

Personnel file regarding the complaint in question has been fully complied with.□

In a letter dated July 5, 2018, the complainant stated that she□

remain in the previous position. She also disputes the correctness of the statement□

of the Respondent of May 25, 2018. The one chosen by the Respondent□

Wording that “it cannot be deduced from the parts of the file that her client□

behavior that is currently in breach of duty is being accused”, is not a correction□

of the events there. The requested correction, according to which the complainant□

with regard to the events related to her sick leave from July 4, 2017 none□

Breach of duty and also no other behavior contrary to duty is to be accused,□

had not been made. Accordingly, the argument of□

Respondent, according to which the addressed with the "necessary clarity".□

Facts are documented and therefore no need for the implementation of□

additions, into emptiness.□

B. Subject of Complaint□

According to the submissions of the parties, the subject is whether the Respondent□

the complainant by not correcting the personal file in□

violated their right to rectification.□

C. Findings of Facts□

The complainant is a contract employee of the federal government, her personnel office is the□

Respondent. The Respondent has been leading since 2009 for the□

Employees of the Federal Finance Administration the personnel files - thus also those of□

Complainant – in electronic form only.□

On July 4, 2017, the complainant called her supervisor□

ill. Furthermore, the complainant wrote that on 7 July 2017□

in accordance with usual practice, a copy of the sick leave enveloped and in□

deposited the organization's mailbox at location N***.□

On July 11, 2017, the tax office N***-M*** notified the service committee□

and the Committee for Disabled Persons at the Federal Social Welfare Office in Styria about the intention to□

Employment relationship with the complainant pursuant to § 32 Paragraph 2 Z. 1 in conjunction with § 7 VBG under□

observance of the notice period according to § 33 VBG.□

By letter dated July 11, 2017, the Respondent informed the□

Complainant that he is accused of a breach of duty because she□

has not properly certified the sick leave.□

On July 12, 2017, the Respondent found the said envelope,□

in which the medical certificate of the complainant with a□

incapacity to work from July 4, 2017. On July 25, 2017, the□

Respondent to the Service Committee and the Disability Committee□

Styrian Federal Social Welfare Office that the intended termination of the□

complainant is refrained from.□

The following relevant documents and papers can be found in the□

Respondent's electronic personnel file relating to this incident:□

□ The log of the complainant's deregistration by the FA N***-□

M*** at the BVA public service from July 11, 2017.□

□ The notification from the tax office N***-M*** to the complainant about the□

Termination of their remuneration due to a breach of official duty□

unjustified absence from work (GZ BMF-*4*3*1/0*2-*/2017).□

□ The notification according to § 9 paragraph 1 lit. a PVG of the tax office N***-M*** to the□

Service Committee, according to which the employment relationship with the□

Complainant pursuant to § 32 Para. 2 Z 1 in conjunction with § 7 VBG□

unjustified absence from work in compliance with the notice period□

to end.□

□ The complainant's medical notification of illness dated July 4, 2018,□

received at the tax office N***-M*** on July 12, 2018.□

□ Letter from the complainant dated July 18, 2018 to the tax office N***-M***, in□

which this requires, among other things, the accusation of breach of duty□

to withdraw and to remove or delete this from the personnel file.□

□ The notification according to § 9 Abs. 1 lit. a PVG of the board of the tax office N***-□

M*** of July 25, 2017 to the Service Committee, after which the□

intended dismissal of the complainant is refrained from.□

□ The letter from the complainant's lawyer dated 24 October 2017,□

after which the complainant exercised her right to rectification or deletion of□

data should actually be in the personnel file□

breach of duty can be seen.□

□ Letter from the tax office N***-M*** dated December 18, 2017 to the□

Complainant: The processes and documents relevant to service law□

are fully recorded and documented in the complainant's personal file.□

It cannot be inferred from these parts of the file that the□

Complainant is accused of breach of duty.□

Notification of the possibility of termination of the□

Employment relationship through termination by the employer is a process that□

was to be documented in the personnel file as a matter of course - as was the fact that□

that the employer has refrained from this measure.□

□ Letter from the complainant dated January 18, 2018, in which the□

Complainant asks the tax office N***-M*** again to□

to formulate the correction in such a way that it is clear and unambiguous that□

that from the events surrounding the sick leave none□

Breach of official duty or other behavior contrary to duty□

complainant was present.□

□ Letter from the tax office N***-M*** dated January 31, 2018 to the□

Complainant: From the point of view of the FA N***-M***, the facts were detailed□

clarified and with the necessary clarity in the complainant's personal file□

documented and there will therefore be no need for the making of□

additions recognized.□

Evidence assessment: The facts result from the arguments of the parties□

Appellant of April 3rd. 2018 including enclosures; Party submissions□

Respondent of May 25, 2018, including attachments and the parties' submissions□

Appellant of July 5, 2018.□

D. In legal terms it follows that:□

1. General□

The legal situation at the time of the decision of the data protection authority is decisive,□

unless it is a matter of judging a behavior towards a particular□

Time. However, the object of the complaint does not become a specific date□

or period turned off.□

According to the legal situation applicable from May 25, 2018, this was the case until now□

the DSG 2000, Federal Law Gazette I No. 165/1999 in the version of Federal Law Gazette I No. 83/2013, as□

Complaints procedure according to § 24 DSG, Federal Law Gazette I No. 165/1999 as amended (cf□

Section 69 (4) DSG).□

2. On the right to correction and completion in accordance with Article 16 GDPR□

Art. 16 GDPR reads including the title (emphasis added by the data protection authority):□

Article 16□

Right to Rectification□

The data subject has the right to have the person responsible immediately ☐

to request the correction of incorrect personal data concerning you. Under ☐

Considering the purposes of the processing, the data subject has the right ☐

Completion of incomplete personal data - also by means of a ☐

supplementary declaration - to demand. ☐

a) Art. 16 GDPR pursues the objective protection goal, the factual correctness of ☐

(re)establish processed personal data. prerequisite for that ☐

The right to rectification is the objective inaccuracy of this personal data. ☐

The concept of incorrectness is a concept that is to be interpreted autonomously under Union law ☐

not defined by the GDPR. The central standard of incorrectness is the objective one ☐

Meaningfulness of the data, regardless of what they are according to the subjective opinion of the ☐

testify to those responsible or those affected. ☐

According to common parlance, incorrect stands for wrong, untrue, inapplicable or ☐

adulterating. ☐

Data (such as the content of a saved text document) contained within the boundaries ☐

of the prohibition of excess (cf. the established case law of ☐

Data Protection Commission, such as the decision of November 29, 2005, GZ ☐

K121.046/0016-DSK/2005) for the purposes of an official procedure, ☐

are considered correct from a data protection point of view if they do the corresponding ☐

Proceedings result (e.g. a file from another authority, a report from a ☐

official body, an expert opinion or the statement of an evidence person) ☐

formally correct. The truth of the content of the information (e.g. in the case of a ☐

testimony), the value of evidence or its admissibility in proceedings ☐

before the authority acting as responsible, it comes, subject to express ☐

other legal regulations, in this context, however, not. ☐

(cf. the decision of the Data Protection Commission of June 14, 2013, GZ DSB- ☐

K121.939/0010-DSK/2013)□

Is the purpose of the data application solely in the documentation of opinions or□

assessment, the data are correct from a data protection point of view if they□

Correctly express an opinion or judgement. (cf. the decision of□

Data Protection Commission of March 21, 2007, GZ K121.246/0008-DSK/2007)□

b) According to Art. 16 sentence 2 GDPR, the data subject has, taking into account the□

Purposes of processing the right to complete incomplete□

to request personal data.□

The prerequisite for this is incompleteness: such are incomplete□

personal information, while accurate on its own, taken as a whole□

but make an objectively wrong statement or incomplete and therefore objective□

are misleading.□

The overall context must be taken into account, taking all circumstances into account.□

The specific processing purpose must be taken into account. The legal duty□

the person responsible for completion exists only in those cases in which the□

added information is actually relevant for the processing in order to□

to ensure the objective accuracy of the data.□

3. On the electronic personnel file that is the subject of the proceedings□

a) According to Art. 2 Para. 1 GDPR, the material scope of application extends□

DSGVO on the automated processing of personal data and on the□

non-automated processing of personal data stored in a file system□

are stored or are to be stored. The electronic personnel file, the one□

digital collection of data held by the employer about the employee□

in any case under the scope of the GDPR.□

The complainant's request was based on the information in the personnel file□

to correct that the complainant□

not guilty of breach of duty. Information about the

Complainant, as in the given case in the personal file of the Respondent

are contained are personal data within the meaning of Art. 4 Z 1 DSGVO and therefore

in principle accessible to a correction according to Art. 16 DSGVO.

The Respondent has the relevant documents in her personnel file

documented and thus formally correctly reproduced. There is no data in the personnel file

contain that can be qualified as false, untrue, inaccurate or falsifying.

The complainant has no right to rectification to the effect that information that

are subjectively important to them, are included in the documentation, or

certain formulations are specified by it (cf. the decision of the

Data Protection Commission of September 24, 2010, GZ K121.608/00014-DSK/2010).

It cannot be deduced from the documented parts of the file that the allegation

a breach of duty or other behavior contrary to duty. It

was only the exact process - from suspicion to the appropriate

Statements according to which the suspicion has not been substantiated - documented, among other things

also that the enveloped notification of incapacity for work was found later and

that the intended termination was then refrained from.

In the present case, therefore, the prerequisite for incorrectness was already lacking

of personal data in the personnel file.

b) Regarding the right to completion: The question of (in)completeness is up

to determine the basis of the specific processing purpose. The added ones

Information must therefore actually be relevant to the processing process in order to

to ensure objective accuracy.

Adding the information that the complainant was not in breach of duty

behaved is, with regard to the processing purpose (documentation,

Personnel administration) not relevant, because this information is already from a

Summary of all relevant documents. The information in the personnel file □

are not incomplete or objectively misleading. It doesn't lie with that either □

incomplete personal data in the personnel file. □

It was therefore to be decided accordingly. □