

GZ: DSB-D216.471/0001-DSB/2018 from 28.5.2018□

[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 the data protection complaint of Alice A\*\*\*□

(Appellant) of July 6, 2017 against N\*\*\*-Telecom GmbH□

(Respondent) for violation of the right to secrecy in a row□

Storage of personal data for a period permitted by law□

as follows:□

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

Respondent thereby waives the right of the complainant□

violated secrecy by sharing their personal information□

processed beyond a permitted period.□

2. The Respondent is ordered within a period of two□

weeks with other execution□

a) the storage of the complainant's master data for a period of time□

of a maximum of seven years;□

b) delete the complainant's traffic data;□

c) all personal data of the complainant, which no□

Master or traffic data are to be deleted.□

Legal bases: § 132 para. 1, § 207 para. 2 of the Federal Fiscal Code (BAO), BGBl□

No. 194/1961 as amended; Sections 24 and 69 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999□

idgF; §§ 92 para. 3 Z 3 and Z 4, 97 para. 2 and 99 para. 2 des□

Telecommunications Act 2003 (TKG 2003), Federal Law Gazette I No. 70/2003 as amended; Art. 5 para. 1 lit.□

e, Article 57(1)(f), Article 58(2)(d) and Article 77 of Regulation (EU) 2016/679□

(General Data Protection Regulation - GDPR), OJ No. L 119 p. 1.□

REASON□

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

In her submission pursuant to Section 30 (1) DSG 2000 of July 6th, the complainant brought□

2017 and a further statement of July 17, 2017 to the data protection authority□

essentially provides that the Respondent's personal data□

store for a period permitted by law. So be you in the course of one□

Request for information according to § 26 paragraph 1 DSG 2000 communicated by the respondent□

been that master data on the basis of § 132 BAO and § 212 UGB for a□

would be stored for a period of ten years. However, this does not only include□

Master data according to § 92 para. 3 Z 3 TKG 2003, but also other personal data□

Data such as date of birth, place of birth and nationality. In addition, the□

Respondent also inadmissibly traffic data for a period of□

stored for six months.□

The Respondent replied in its statement of July 13, 2017□

summarized, the storage of master data for a period of ten years□

have to be based on the legal provisions of § 207 Para. 2 BAO and is□

therefore the intervener does not violate her fundamental right to data protection.□

B. Subject of Complaint□

Based on the submissions of the appellant, it follows that□

The subject of the complaint is whether the respondent has personal□

Data of the complainant beyond a legally permissible period□

stored and thereby the complainant in her right to secrecy□

has hurt.□

### C. Findings of Facts□

The Respondent operates a telecommunications service. Between the□

Complainant and Respondent had a contractual relationship□

which ended in September 2015. A request for information from the complainant□

in the spring of 2017 revealed that the Respondent, even after the end of the□

contractual relationship stores certain data. The Respondent saves□

(in addition to other personal data, see next paragraph) Master data for the□

Duration of 10 years and traffic data for the duration of 6 months.□

Specifically, the following personal data of the complainant are also□

Termination of contractual relationships stored:□

Contract name:□

Alice A\*\*\*□

Address:□

Address:□

Birth date:□

Place of birth:□

ID type:□

ID number:□

Authority:□

Nat.:□

IBAN:□

BIC:□

Bank:□

Account owner:□

Annotation:□

Advertising: ☐

Contract type: ☐

\*\*\*dorf \*4, A-\*45\* \*\*\*dorf ☐

\*\*\*dorf \*4, A-\*45\* O\*\*markt-\*\*\*wang ☐

\*\*.\*.199\* ☐

H\*\*town ☐

passport ☐

\*2\*4\*56\*0 ☐

Bra R\*\*\* ☐

AT ☐

AT8xxxxxxxxxxxxx4\*5 ☐

R\*\*4\*5U ☐

RAIFFEISEN BANK \*\*\*\*\* EGEN ☐

Peter Z\*\*\* ☐

The IBAN is used for security reasons only ☐

shown in abbreviated form. ☐

Yes ☐

mobile ☐

Customer number: ☐

\*5\*8\*\*33\*27 ☐

phone number: ☐

SIM exchange: ☐

SIM old: ☐

SIM new: ☐

First activation: ☐

Tariff: ☐

Status:□

+43 6\*\* 5\*4\*8\*3\*\*□

\*\*.\*\*.2013□

A\*4\*76\*\*2\*6\*\*\*□

A74\*77\*1\*6\*8\*\*5□

\*\*, \*\*,2009□

\*\*\*\*\*□

\*\*.\*\*.Canceled in 2015 / Port Out□

Auxiliary phone number for port-out:□

+43 6\*\* \*78\*3\*\*1 – secret□

SIM:□

A74\*77\*1\*6\*8\*\*5□

First activation:□

\*\*.\*\*.2015□

Tariff:□

Status:□

\*\*\*\*\*□

\*\*.\*\*.Canceled in 2015□

Procedures other than those before the data protection authority, in which the mentioned□

Data relevant to the procedure are not on record.□

Evidence assessment: The findings are based on the submissions of the□

Complainant of July 6, 2017 and the attachments there, in particular the□

Answering the request for information by the respondent, as well as the□

Respondent's statement of July 13, 2017.□

D. In legal terms it follows that:□

General:□

According to the legal situation applicable from May 25, 2018, this was previously according to § 30 DSG

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

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

Section 69 (4) DSG).

According to Art. 5 Para. 1 lit. e GDPR, personal data must be in a form

are stored that identify the data subjects only for so long

enables as necessary for the purposes for which they are processed;

Personal data may be stored longer if the

personal data subject to the implementation of appropriate technical or

organizational measures required by the GDPR to protect rights and

Freedoms of the data subject are demanded, exclusively for public

Archive purposes that are of interest or for scientific and historical purposes

processed for research purposes or for statistical purposes in accordance with Article 89 (1).

(“Storage Limitation”) (emphasis added by the Data Protection Authority).

In the present case, the question arises as to whether a longer

Duration of retention of the personal data, also after the termination of the

contractual relationships and thus beyond the achievement of the purpose, is justified.

To the master data:

According to § 97 paragraph 2 TKG 2003 master data are at the latest after the end of the

to delete contractual relationships with the participant from the operator. exceptions

are only permissible to the extent that this data is still required in order to pay fees

charge or bring in, process complaints or other legal

to fulfill obligations.

If the Respondent relies on the storage of master data

ten-year period of § 207 Para. 2 BAO, she fails to recognize that this is only one

Statute of limitations, but no specific obligation to retain data

is normalized. A legal obligation, master data over the period according to § 97 paragraph 2

TKG 2003 cannot be derived from § 207 Para. 2 BAO. Also the

In its more recent jurisprudence, the Constitutional Court assumes that the

further retention of data through a concrete emerging procedure

must be justified. The mere possibility that proceedings will be initiated is sufficient

however, not enough (see the finding of December 12, 2017,

GZ E3249/2016).

The situation is different with § 132 para. 1 BAO, which stipulates a storage obligation

Books and records standardized for seven years and thus also the

data protection requirements of Article 5 Paragraph 1 Letter e GDPR and Article 97 Paragraph 2

TKG 2003 corresponds.

The Respondent is therefore authorized to master data according to § 132 para. 1 BAO for the

to be retained for a period of seven years.

To the traffic data:

According to Section 99 (2) TKG 2003, the operator of a public communications network

or service to store traffic data, provided this is for billing purposes

End customer or wholesale service charges is required. The traffic data is closed

delete or anonymize as soon as the payment process has been carried out and

the fees have not been objected to in writing within a period of three months.

The Data Protection Authority understands that the Respondent with regard to the

corresponding mail or internal processes a flat rate of six months

Storage period for traffic data welcomes, but this does not correspond to the

legal requirements of Art. 5 Para. 1 lit. e GDPR and thus constitutes a violation of the

fundamental right to data protection.

The Respondent is therefore only authorized here, traffic data according to § 99 para.

2 TKG 2003 for a maximum period of three months or in accordance with the TKG

2003 standardized objection period.□

Since the contractual relationship between the complainant and the respondent□

was completed in September 2015, the deadline is three at this point in time□

months according to § 99 paragraph 2□

TKG 2003 expired in any case and the Respondent therefore has all□

delete the complainant's traffic data.□

For the other data:□

As stated, therefore, the storage of master and traffic data for□

certain periods of time after termination of the contractual relationship are legally permissible.□

However, the Respondent stores according to its own information□

additional, personal data, as can be seen from the above□

table can be found. The data protection authority could in the course of the procedure□

not determine any special legal provision, according to which a longer storage of□

personal data than for the purpose for which they were collected,□

appears necessary.□

The storage of personal data beyond the contract period□

data that is not master or traffic data according to the TKG 2003□

therefore also the principle of storage limitation according to Art. 5 Para. 1 lit. e GDPR and□

is to be refrained from by the Respondent.□

Conclusion:□

The data processing proves to be unlawful to the extent claimed.□

For the restoration of the data protection compliant state was the□

Data protection authority therefore in accordance with Art. 58 (2) (d) GDPR in conjunction with Section 24 (5) DSG□

entitled to the Respondent within a set period of time according to the verdict□

instruct to restore the legally compliant state.□