

GZ: 2020-0.844.057 from February 2nd, 2021 (case number: DSB-D124.733)

[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 Roswitha A****'s data protection complaint (Appellant), represented by Attorney Dr. Verena B***, December 23, 2019 against N*** Versicherungen AG (respondent) for violation of the law secrecy as follows:

- The complaint will be given consequence and it will

found that the

Respondent gives the complainant the right to secrecy

injured

has,

in which

this

the

personal credit data

the

Complainant in the form of a traffic light indicating payment behavior from the X*** am

March 11, 2019.

Legal basis: Article 5 paragraph 1, Article 6 paragraph 1 letter f, Article 12 paragraph 4, Article 51 paragraph 1, Article 57

Paragraph 1

lit. f and Art. 77 (1) of Regulation (EU) 2016/679 (data protection

Basic Regulation, hereinafter: GDPR), OJ No. L 119 of 4.5.2016 p. 1; §§ 1 para. 1

and Section 2, Section 18 Section 1 and Section 24 Section 1 and Section 5 of the Data Protection Act (DSG),

Federal Law Gazette I No. 165/1999 as amended. Section 275 (1) and (2) Insurance Supervision Act (VAG),

Federal Law Gazette I No. 34/2015 as amended.

REASON

A. Submissions of the parties and course of the proceedings

1. With the complaint initiating the procedure dated December 23, 2019, supplemented on February 3

In 2020, the complainant, represented by a lawyer, alleged a violation of the right to

Confidentiality. In summary, on February 3, 2019, she had an accident in an accident

suffered a serious injury, which the property management of your insurance or the

complainant reported. This occurred without hesitation in the damage and

paid the complainant compensation. On September 13, 2019, the

Complainant learned that the Respondent on March 11, 2019

I made a credit check with X***. The complainant complained that it was

Legal basis for the data query was lacking in connection with the processing of

Liability insurance cases, according to which in the specific case any suspicion of a possible

Insurance fraud is excluded. It was about one

acted in a manner that is not customary in traffic and not covered by law, which they do not

have agreed.

2. In a statement dated March 6, 2020, the Respondent summarized

that the data information is based on the legitimate interests in the specific case

Combating insurance fraud (cf. recital 47 GDPR) of the respondent or

the creditor according to Art. 6 Para. 1 lit. f GDPR would have been permissible. Accordingly, there are cases of fraud

in the damage division also regularly by fraudulently obtaining or an increased amount

to insurance benefits have been committed by injured parties. I have one

Correlation between the victim's payment history and susceptibility

for

Insurance fraud passed. Therefore, in the suspected case, the Respondent

Submissions an application connected to the system of X*** GmbH

Payment behavior of injured parties, which reflects the payment behavior of those affected only in

Display the form of traffic light colors (green, yellow, red). Regardless of the result, one succeeds

detailed further examination only if further suspicions had arisen.

In the specific case, the complainant was shown a red traffic light. The

detailed check for suspected fraud

may be

in the

entitled

interest of

Respondent takes place. Finally, based on point 3.7

of the data protection information had to reckon with the processing. The obligation of

Fraud prevention to protect creditors has also emerged from Section 275 (2) VAG and from

the ordinance of the Federal Minister of Finance of August 27, 1981 on the prohibition

non-contractual benefits from insurance companies. Would it come to

unlawful payments, this puts all materially entitled creditors at a disadvantage

wrong.

3. The complainant summarized the statement dated March 26, 2020

out, she is unable to explain the "red signal". The complainant is

due to their impeccable payment behavior and professional position, no suspected case.

4. Repeated in the re-comments of May 14, 2020 and September 21, 2020

the Respondent essentially its earlier statement and added that

Respondent has all damage reports cursory to a possible

suspected fraud checked. A small part of this first fraud check is also the generic verification of payment history. The payment behavior in the form of a traffic light exclusively generated by X*** GmbH. The Respondent can therefore no influence or insight into the decisive circumstances for the classification of the Take the complainant under the traffic light "red". Presumably the basis is this credit rating the X*** the in the Year 2012 filed for bankruptcy or.

Claims Procedure. It is between a mere provision of a color Indication of the payment behavior, which takes place as part of the examination of the damage report and a concrete data query of the detailed creditworthiness statement.

The latter did not happen in this specific case. In addition, for data processing the traffic light color and therefore also to ensure that it is up-to-date and correct X*** GmbH is exclusively responsible. The Respondent has her

Data up-to-dateness guaranteed by the fact that the creditworthiness information is updated daily via the implemented interface had been obtained. The Respondent is never open historical creditworthiness data of X*** GmbH is used. There is also no recourse to the traffic light color queried at the time when a new claim is reported.

5. As part of the party hearing on October 6, 2020, the complainant repeated in Essentially her previous complaint.

B. Subject of Complaint

Based on the submissions of the complainant, the subject of the complaint is:

the question of whether the Respondent thereby entitled the Appellant to
breached secrecy by providing this credit information about the complainant
by querying X*** GmbH in the course of processing an insured event
processed.

C. Findings of Facts

1. The complainant suffered an accident on February 3, 2019, which the property manager reported to her liability insurance, that is the Respondent.
2. The Respondent examined the damage case, among other things, by the fact that on March 11 2019 a query at the creditworthiness database X*** GmbH on the payment behavior of the Respondent acted. The Respondent resorted to X*** GmbH provided traffic light function via a corresponding interface. In the specific case the traffic light color "red" was displayed, which meant negative payment behavior.
3. The Respondent paid the Complainant the compensation for pain and suffering.
4. On September 13, 2019, the Appellant learned that the Respondent asked for creditworthiness data from X*** GmbH.

Evidence assessment: The findings result from the insofar undisputed arguments of the parties in their submissions to the data protection authority and in particular from the mentioned submission of the complainant December 23, 2019, corrected on February 3 2020

D. In legal terms it follows that:

According to § 1 Para. 1 DSG everyone has, in particular with regard to the respect of his Private and family life, right to secrecy of concerning him personal data, insofar as there is a legitimate interest in it. Below is

the protection of the data subject against the determination of his data and the protection against the to understand the transmission of the data determined about him. Purely conceptually, this process processing of personal data by the person responsible.

Any processing is carried out with or without the aid of automated procedures process or

any such series of processes understood that

in connection with

personal data such as collecting, recording, organizing, sorting, the

Storage, querying, use, etc. (cf. Art. 4 Z 2 leg. cit. GDPR).

When collecting by querying creditworthiness data in the form of a red traffic light, which one shows negative payment behavior, it is undisputedly about the processing personal data of the complainant.

1. To limit the claim to secrecy:

§ 1 para. 1 DSG stipulates that everyone, especially with regard to respect of his private and family life, right to secrecy concerning him personal data, insofar as there is a legitimate interest in it. One

Limitation of this right results in principle from paragraph 2 leg. cit., the GDPR and in particular, the principles enshrined therein are, however, for the interpretation of the law secrecy must be taken into account in any case (cf. the decision of the DSB of October 31 2018, GZ DSB-D123.076/0003-DSB/2018).

In the present case, there are no vital interests of the complainant recognizable, and there was also no consent to data processing. It must therefore be checked First of all, whether overriding legitimate interests are possible as a permit or not is available.

2. To balance interests

The processing of creditworthiness-relevant data, in the present case querying the

personal data of the complainant by the respondent at the

Credit information agency X*** GmbH can fundamentally be based on Article 6 (1) (f) GDPR

are valued because the prevention of insurance fraud is a legitimate interest

can be.

Subsequently, based on the criteria mentioned, it has an evaluation of the entitled

interests of the complainant and these are the legitimate interests

to the Respondent and third parties.

As part of this

When balancing interests, it must be taken into account that Art. 6 (1) (f) GDPR has two cumulative

Knows the prerequisites for the Respondent to rely on this legal basis

can support: On the one hand, the processing must be carried out to protect the legitimate interests of the

Controller or a third party may be required, on the other hand, fundamental rights and

Fundamental freedoms of the data subject, which require the protection of personal data,

do not predominate (cf. on Art. 7 lit. f of Directive 95/46/EC the judgment of the ECJ of

24 November 2011, C-468/10 and C-469/10 [ASNEF and FECEMD] para. 38).

This is in the Respondent's interest in preventing insurance fraud

Complainant's interest in her right to secrecy under Article 1(1).

DSG opposite.

In order to enable the data protection authority to carry out a balancing of interests

to understand, these are in the context of a complaints procedure by the person responsible

provide all information required for a verification check.

The Respondent argues that a query should only be carried out in the event of suspicion,

but failed in the process to provide a specific reason for their suspicion that

Appellant could be a risk of insurance fraud, set out and stayed

therefore the answer guilty, which is why the data query at X*** GmbH is absolutely necessary

goal achievement was necessary. She was therefore unable to explain in a comprehensible manner why hers

economic interests in this case compared to the interests of the respondent predominate.

It was therefore to be decided accordingly.