

GZ: DSB-D123.512/0004-DSB/2018 from 01/11/2019□

[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 and/or changed for reasons of pseudonymization.□

Corrected obvious spelling, grammar, and punctuation errors.]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint from Mr Karl A***□

(Appellant) of September 17, 2018 against the city of N***, **** housing administration□

(Respondent) for violation of the right to information as follows:□

- The appeal is dismissed.□

Legal basis: § 1 paragraph 1, § 24 paragraph 2 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amen

Art. 15 General Data Protection Regulation – GDPR, OJ L 119, p. 1; Sections 3 and 4 of the Federal Law on the□

Service contract of caretakers (caretaker law), Federal Law Gazette No. 16/1970 as amended;□

REASON□

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

In his procedural submission of September 17, 2018, the complainant stated that□

the Respondent had violated his right to information by responding to his request□

§ 44 DSG of July 17, 2018 did not answer. He had the request for information directly from the□

Respondent submitted.□

In a further submission of September 17, 2018, the complainant used for the□

input with the same content the form of the data protection authority for an infringement according to § 1□

DSG. The complainant stated that he had requested information from “the vicarious agent□

Caretaker U***” and his identity was thereby clarified.□

In a third submission dated September 17, 2018, the complainant again submitted his□

Request for information pursuant to Section 44 DSG to the Respondent and led once again to the□

Complaint form for violations of rights pursuant to Section 1 DSG, the respondent submitted it in
right to information violated.

In a fourth submission dated September 17, 2018, the complainant again submitted his
Request for information pursuant to Section 44 DSG to the Respondent and led once again to the
Complaint form for violations of rights pursuant to Section 1 DSG, the respondent submitted it in
right to information violated.

With completion GZ: DSB-D123.512/0001-DSB/2018 of September 26, 2018 demanded the
Data Protection Authority asked the Respondent to comment and submitted the accumulated
The complainant's submissions to the opinion.

With a submission of October 5, 2018, the complainant repeated his previous submissions of
September 17, 2018 and added a further request for information in accordance with Art. 15 GDPR to the
Respondent dated July 2, 2018. The complainant again stated that he had
submitted the request for information to "the vicarious agent caretaker U****".

With submission of October 15, 2018, ho. arrived on October 16, 2018, took the
Respondent position and stated that GZ: DSB-D123.189/0003-DSB/2018 a

Complaint with the same parties to the proceedings about an alleged violation of the right to
information is pending. Furthermore, it is stated that the Respondent

have not received the request for information that is the subject of the proceedings pursuant to Section 44 DSG. For delivery
of documents is stated that the answering of requests for information in the area

Sovereignty fall and the relevant literature - in contrast to the non-applicable

Rules of civil law - do not require delivery to the competent bodies and accordingly

delivery by handing over to auxiliary bodies (e.g. entry point) is permissible, but handing over

is not covered by entries to the private address of employees. Even if a servant

the Respondent has a company apartment, this does not harm. Incidentally would also

upon receipt of the complainant's submission, the request in the absence of the

Prerequisites for the Respondent for the application of the third main part of the DSG

been rejected.□

With completion GZ: DSB-D123.512/0003-DSB/2018, from November 16, 2018, the□

data protection authority to listen to the complainant.□

In a submission dated November 28, 2018, the complainant stated that the caretakers were□

vicarious agents and he considers the delivery to the respondent to be "legal□

approached". The Respondent leads the Respondent on their website (information regarding□

caretakers) themselves. The "EU-compliant mailboxes" are also owned by the□

Respondent. To date, there has been no response to the request for information. Otherwise will□

requests that the form be deemed correct ex officio.□

B. Subject of Complaint□

The object of the complaint is therefore the question of whether the respondent□

violated the right to information.□

C. Findings of Facts□

On July 16, 2018, the complainant threw up at the caretaker of the apartment building in T***□

Street **17 the completed form from the data protection authority with the request for information from the□

Respondent was requested according to § 44 DSG, in their mailbox. The caretaker□

has a company apartment at the address there, which is also her private address.□

Evidence assessment:□

Evidence was raised through the submissions of the parties. The facts of the case are not in dispute. the□

In the ongoing proceedings of the Respondent's execution, the complainant has that the□

did not receive the request for information is not disputed. He led, held up by the□

Data protection authority only states that by dropping it in the mailbox of the official residence of the□

Concierge considered his request as delivered.□

D. In legal terms it follows that:□

Regarding the subject of the proceedings:□

From the statements of the complainant it follows that he found that□

Respondent violated his right to information, wishes. The complaint to the

The complainant subsumed the data protection authority in his – the subject of the proceedings

educational - first input, however, under § 1 DSG:

For party submissions, not only the wording of the complaint, but also the will of the party

considerable. The existence of prerequisites is not to be interpreted strictly formally, provided that the

The subject of the proceedings - albeit after interpreting the arguments within the meaning of §§ 6 and 7 ABGB -

can be recognized without a doubt, i.e. without the possibility of confusion (VwGH 13.11.2014,

Ra 2014/12/0010). Since already from the procedure and from the to the respondent

directed request shows that the complainant has the right to determine the violation

information according to Art. 15 GDPR, the incorrect designation of the right was only in the letterhead

irrelevant to the input, since the will is clearly evident.

For delivery:

The complainant believes that his request for information has already been made effective by

put it in the letter box of the caretaker's official apartment as the "vicarious agent".

Respondent submitted. The result cannot be followed:

The complainant alleges a violation of the right to information without

to have effectively made the request for information that is the subject of the proceedings. The

The Respondent never received a request for information. The complainant has in

ongoing proceedings of the execution of the Respondent, that this is not the request for information

has received, not disputed. When reprimanded by the data protection authority, he merely stated that he

deem the delivery "legal" because he put it in the caretaker's mailbox. in the

As a result, the complainant believes that its attachment is already in the area of disposal

the Respondent got it because he put it in the mailbox of the caretaker's official apartment

threw in. There is no reason to assume that (according to Sections 3 and 4 of the House Caretaker Act

determinate) tasks of the caretaker would also include the receipt and forwarding of

contain documents. Simply because between the caretaker and the respondent

Service contract exists, their mutual obligations by no means to the procurement of this type of

Tasks is directed, can not be concluded that a document in the disposal area

the respondent came.

According to Art. 12 GDPR, a person responsible (the respondent) has the option of

to provide transparent communication and to inform about it. That's what she thinks

Respondent also has a contact form on its website regarding data protection law

Entries - in addition to the general mailbox - ready. The complainant used the

However, the available contact options do not.

Art. 15 GDPR is conceptually a right that requires an application and requires a limine to the

designated Respondent received request.

After the ed. Jurisdiction on remediable or non-remediable defects is to distinguish whether in

The circumstance to be proven is missing at the relevant point in time (this case is an irremediable

lack) or whether there is simply a lack of proof of the already existing circumstance (in

In the latter case, the defect can be remedied; cf. the ed. B of November 11, 2015, Ra 2015/04/0077,
mwN).

Since the request for information under data protection law never reached the designated respondent,

the complainant lacks in relation to the alleged facts at the time of the submission of the

Complaint to the legitimacy.

The complaint regarding the alleged violation of the right to information was admissible

to reject.