

GZ: DSB-D123.901/0002-DSB/2019 from 31.7.2019□

[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 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 Dr. Peter A\*\*\*□

(complainant) of December 10, 2018 against N\*\*\* Bausparkasse AG□

by B\*\*\* Rechtsanwalts GmbH & Co KG, Dr. Karl B\*\*\*, lawyer in \*\*\*\*□

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

1. The complaint will be upheld and it will be established that the□

Respondent thereby waives the right of the complainant□

information has violated by his request for information from October 29□

2018 did not correspond.□

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

Weeks, otherwise execution, the complainant's request for information□

to comply with them or to comply with them by not taking action in accordance with Art. 12 Para. 4□

to teach GDPR.□

Legal basis: Art. 15, Art. 57 (1) lit. f, Art. 58 (2) lit. c and Art. 77 (1) of the□

General Data Protection Regulation (GDPR), OJ No. L 119 of 04.05.2016, page 1; § 24□

Paragraph 5 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□

1. With a submission dated December 10, 2018, the complainant alleges an infringement□

in the right to information and summarizes that he has a request for information□  
addressed to the Respondent, but informed the Respondent, not the application□  
to follow, since the identity of the complainant is not with sufficient certainty□  
can be ascertained. In his request for information, the complainant had□  
substantive information on his identity, in particular on the last one□  
Contract with the person responsible, the payment amount and the payment date□  
and also the payout account. He also has a copy of his ID□  
Request for information settled, his identity is thus clearly established. It be him□  
Those responsible have been able to request the information by post at any time□  
to provide the information in accordance with Art. 15 GDPR in a way that□  
that only he personally receives the information, so that a violation of the□  
Data protection or the provisions of the BWG through the type of transmission□  
would have been excluded. The requirements that those responsible for the□  
identity check are excessive and do not correspond to the requirements□  
of Art. 12 GDPR. Even if the person responsible does not comply with the provisions of the BWG□  
is subject to the identity of the email sent on October 19, 2018, the one contained therein□  
content and the attachment of a copy of your ID is sufficient□  
proven. The person responsible would therefore have the information within the statutory□  
have to grant a deadline.□

2. With a statement dated January 25, 2019 (received on January 28, 2019), the□  
Respondent summarized from the fact that when examining the□  
Request for information came to the conclusion that the information transmitted□  
were not sufficient for a clear determination of identity. Although the e-□  
Complainant's mail with a PGP key, but not a qualified one□  
electronic signature according to § 4 Abs. 1 SVG. You can only do that□  
verify that the email actually came from the specified sender email address□

come from During the review, it was also found that the

Complainant is a former customer and there are no current products

give. In the Respondent's system, there was no approval of the

Complainant noted for communication via email. You have that

Complainant informed by registered letter that his identity does not match

could be ascertained with sufficient certainty and had the possibility to

identification shown.

The Respondent justified her actions with the increased duty of care

licensed credit institute and banking secrecy according to § 38 BWG. Without

Sufficient verification of identity runs the risk of data being transferred unlawfully to one

to transmit to third parties. A credit institution does not only have to determine the identity

to check in accordance with the GDPR, but also with the care that is also required in

normal business dealings with customers when providing data

would be subject to banking secrecy.

The options offered for identification are not excessive. With the

The form of identification chosen by the complainant cannot be ruled out

that critical data would be passed on to third parties because it is not exhaustive

it is possible to check who made the request for information.

The complainant's suggestion to send the information by post was also

not suitable for dispelling doubts about identity, since it is not an upright one

contractual relationship no longer exists and the Respondent no longer refers to the

correctness of the address.

Finally, the Respondent also submits to the Complainant

Lack of interest in legal protection, essentially stating that

The complainant is not concerned with enforcing his right to information, but

about doing legal training and generating content for his blog. The

Requests for information and the complaint would only be of his own business□

serve interest. The complainant himself stated that it was his intention to□

clarify whether the requirements for identity verification are excessive or not.□

3. As part of the hearing of the parties, the complainant brought input dated□

February 15, 2019 summarized that on the basis of the request for information□

the data presented should have been unequivocally identified. there is□

no reasonable doubts about his identity. The Respondent aggravated□

through their actions merely exercising their rights as a data subject and counteracting them□

Art. 12 para. 2 GDPR. None of the identification options granted by the□

Respondent complies with the principles of the GDPR.□

An appeal to the banking secrecy of § 38 BWG also provides a□

Abuse of rights. With regard to banking secrecy, the□

Priority of application of the GDPR must be observed.□

The Respondent was also aware of the Complainant's address□

result from the postal delivery of the request for proof of identity.□

This postal address was not even mentioned in the request for information. The sending□

of a letter inevitably means that the Respondent is the Appellant□

could identify. The Respondent would also have registration information□

can catch up.□

It is correct that the PGP key proves that the e-mail actually came from the□

sender email address. With this information it is the Respondent□

however, it is possible to determine the information associated with the domain.□

It is correct and at the same time legally irrelevant that the request for information is not□

was provided with a qualified electronic signature.□

It is also irrelevant that in the Respondent's system no consent of the□

complainant to communicate via email. Art. 15 GDPR□

clearly states that an electronic request is to be followed by an electronic response□

have taken place. The application also contains an express consent that the□

Information should be provided by email.□

The lack of interest in legal protection alleged by the Respondent lies□

does not pretend that there is an interest in legal protection in any case.□

## B. Subject of Complaint□

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

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

violated his right to information by responding to his request for information□

dated October 29, 2018.□

## C. Findings of Facts□

The Complainant provided the following via email on October 29, 2018□

Request for information according to Art. 15 GDPR to the respondent, whereby he□

Copy of ID and a screenshot of the Respondent's website□

sent along. The e-mail itself was provided with a PGP key and was□

verifiably sent from the address p.a\*\*\*@a\*\*-h\*\*-o\*\*.at. The domain owner of□

"a\*\*-h\*\*-o\*\*.at" is called "Peter A\*\*\*\*" and company "A\*\*H\*\*O\*\* - A\*\*\* H\*\* &□

Partner Rechtsanwälte Kommandit-Partnerschaft" registered. Below this information is found□

an entry at the Upper Austrian Bar Association.□

[Editor's note: The e-mail originally reproduced here as a facsimile can□

not be pseudonymised with reasonable effort. It contains the note, "as□

customer and legal representative of customers and as authorized signatory□

different, already closed accounts (building savings contracts)" in relation to□

Respondent to have confessed and a request for "complete information"□

according to Art. 15 GDPR and a "copy of the data iSd Art 15 (3) GDPR". It□

also contains a reference to the time of the last visit to the website□

Respondent and the IP address used. Next are for the purpose□

Identity verification Complainant's name, date of birth and residential address, a□

Copy of ID and the ID/account numbers, the amount paid out and the□

Recipient account number of a home savings contract paid out in 2018. the□

Complainant expressly declares himself by providing information by e-mail□

I Agree.]□

As a result, the Respondent sent the following letter by post dated 27.□

November 2019:□

[Editor's note: The original letter reproduced here as a facsimile□

cannot be pseudonymised with reasonable effort. The complainant□

is informed that his identity cannot be established with sufficient certainty□

could. With reference to banking secrecy, he is asked to verify his identity□

a personally signed letter including a copy of your ID, by personal□

Approach the Respondent's office or send an e-mail□

qualified electronic signature.])□

Evidence assessment: These findings follow from the consensus□

Party submissions, as well as the present request for information of October 29, 2018 and□

the Respondent's letter of reply dated November 27, 2019. The□

Findings about the domain owner of "a\*\*-h\*\*-o\*\*".at" result from a□

official research (Whois query) by the data protection authority (requested on□

07/31/2019). The findings on the registration with the Austrian□

Bar association result from an official research by the□

Data protection authority on the website <https://www.ooerak.at/rechtsanwalt/suche/>□

(Retrieved on 07/31/2019).□

It is also established that the complainant at [www.daten\\*\\*\\*\\*.at/blog\\*\\*/](http://www.daten****.at/blog**/)□

operates a public blog and on \*\*. November 2018 published a blog entry in□

which he submitted his request for information and the Respondent's letter of reply□

led. He also asked his readers whether, in his opinion, he was because of the□

Excessive requirements for identity verification, complaint to the□

data protection authority should raise, or whether he should give the respondent another□

should give a chance.□

The Respondent then asked the Complainant to edit this blog entry□

to delete, whereupon the complainant on \*\*. December 2018 the blog entry from□

\*\*. November 2018 replaced by a new blog entry. Shared in the new blog entry□

the complainant tells his readers that he will – following the majority – become one□

lodge a complaint with the data protection authority.□

Evidence assessment: These findings result from the submissions of the□

Complainant and the submitted screenshots of the blog entry dated \*\*.□

November. The existence of this blog entry was also never confirmed by the complainant□

denied. The findings on the blog entry from \*\*. December 2018 arise□

also from official research by the data protection authority on the website□

[https://www.daten\\*\\*\\*\\*.at/2018/12/\\*\\*/auskunftsbegehren-whats-next/](https://www.daten****.at/2018/12/**/auskunftsbegehren-whats-next/) (accessed on□

07/31/2019).□

On December 10, 2018, the complainant sent the following email to the□

Respondent:□

[Editor's note: The e-mail originally reproduced here as a facsimile can□

not be pseudonymised with reasonable effort. The complainant agrees□

Respondent in advance, enclosing a copy of the notice of appeal, that□

he will contact the data protection authority. The intention of the procedure is□

Clarification of the question of whether the "requirements... to□

the identity check" are excessive.]□

Evidence assessment: This finding results from the subject e-mail from□

December 10, 2018, by the Respondent together with her

opinion was submitted.

D. In legal terms it follows that:

D.1. On the right to information

According to Art. 15 Para. 1 GDPR, the data subject has the right from

To request confirmation from those responsible as to whether they are concerned

personal data is processed and, if this is the case, information about

to receive this personal data and to be entitled to the information

according to lit a to h leg cit. In accordance with Art. 15 Para. 3 GDPR, the person responsible has a copy

of the personal data that are the subject of the processing, the data subject

to provide. If the data subject submits the application electronically, the

Provide information in a commonly used electronic format, provided that

she says nothing else.

D.2. For legal protection

The Respondent also submitted in the present proceedings that

the complainant lacks an interest in legal protection because it is primarily about that

go to generate content for his blog and conduct legal training and he does that

I did not request information primarily to protect his rights as a data subject.

An application for the provision of information that is not based on legal protection interests,

lack the necessary basis.

The decision of the former cited by the Respondent

Data Protection Commission (K121.415/0002-DSK/2009), in which the importance of a

recognizable legal protection interest of those affected for the scope of his

Right to information was pointed out, can not be readily applied to the present case

be transmitted. According to this decision, the claim is one

Right to information about a database that can be viewed by the person concerned at any time,



as far as the knowledge of the content can be gained through the inspection, as

disproportionate claims on the part of the customer that are not objectively necessary

according to § 26 paragraph 2 DSG 2000 (as amended by Federal Law Gazette I 136/2001). The scope of

The right to information must therefore be seen in relation to the respective interest in legal protection

will. This decision was based on the former § 26 DSG 2000, which

among other things, provided for an explicit obligation of the person requesting information to cooperate

to avoid unjustified and disproportionate effort on the part of the client.

It should also be noted that even after the established Rsp to the old legal situation

According to Directive 95/46/EG, § 26 DSG 2000 as amended by Federal Law Gazette I No. 83/2013 (which Art. 12 of the

mentioned directive implemented) a data subject no further

justifiable interest in the information in this provision

intended extent granted (cf. VwSlg 17.090 A/2006).

Art. 15 GDPR expands the right to information compared to the old legal situation in

DSG 2000 as amended by Federal Law Gazette I No. 83/2013 is still out and an obligation to cooperate is only in

Recital 63 GDPR indicated, but no longer expressly standardized. So is a

The person responsible is entitled to request clarification from the data subject,

but he has no right to it. In general, Art. 15 GDPR does not provide for any

Requirements for the right to information. So is the processing of

personal data subject of the information and not a requirement. It is

also not to be assumed and also not apparent from Art. 15 GDPR that the

European legislators, contrary to the intention that has been stated several times,

Wanting to strengthen the rights of those affected is now a special "interest in information"

has provided for (cf. the finding of the BVwG of September 27, 2017,

GZ W214 2127449-1). Only manifestly unfounded or excessive requests

can be rejected by the person responsible. In the present case, the application

but neither obviously unfounded (the person requesting information is a former customer)

nor excessive (a frequent repetition is not recognizable and has never been claimed).

The result is that an explicit interest in legal protection is not a prerequisite for a request for information according to Art. 15 GDPR, since everyone has the right to information. A natural person is unconditionally entitled. The request for information must therefore also not be particularly justified. The Respondent's submissions on lack of interest in legal protection is therefore not convincing.

#### D.3. For proof of identity

The common modalities for exercising the rights of data subjects (including the Right to information) are regulated in Art. 12 GDPR. Accordingly, the person responsible facilitates the data subject to exercise their rights. The emergence of a right to information under data protection law requires, among other things, that the identity of the information applicant is certain. If a person responsible makes it credible that he is not able to identify the data subject, he can refuse to take action.

If the person responsible has justified doubts about the identity, he can, according to Art. 12 Para. 6 GDPR request additional information needed to confirm the identity of the affected person are required.

Art. 12 GDPR does not provide for a specific form of identification. Recital 64 GDPR states in this regard that the person responsible shall use all reasonable means should use to verify the identity of a data subject seeking access check, in particular in the context of online services and in the case of online identifiers. A controller should not use personal data solely for that purpose.

Store the purpose of being able to respond to possible requests for information.

The VwGH has already dealt with the requirement for proof of identity in connection with Exercising the right to information and in relation to the legal situation after

DSG 2000 stated the following:

"The provision of § 26 DSG 2000 has the clearly recognizable purpose, a

Abuse of the right to information to obtain information by third parties

to advance. A client may not without proof of identity

Data to the information seeker - of which he can only assume at this moment that

he is actually the data subject - because otherwise he would not comply with data secrecy

§ 15 para. 1 DSG 2000 could violate."

"The proof of identity must be provided in the form that is required of the client

allows to verify the identity of the information seeker with the person whose data

should be the subject of the information. With regard to the objective of the law and to

Prevention of misuse is - as already mentioned - a high degree of reliability

regarding proof of identity."

(cf. VwSlg 19.411 A/2016, E of September 9, 2008, 2004/06/0221)

These considerations can be transferred to the new legal situation, since

Purpose of the counterpart regulation for identity verification according to Art. 12 Para. 6

GDPR has not changed anything (see Recital 64 GDPR and Recital 41 of the Directive (EU)

2016/680 of April 27, 2016).

However, the obligation of the data subject to

to disclose their identity when requesting information. Only if that

responsible person has justified doubts, which are to be explained on a case-by-case basis, he can

request further information to identify the applicant. A

However, the person responsible is not generally allowed to present proof of identity

to demand. It is always a case-by-case decision.

D.4. In the matter

In the present case, the question arises whether the respondent when filing the application

had justified doubts about the identity of the information seeker and therefore also

rightly requested further information to confirm identity. In other words,

the Respondent lacked information needed to confirm the identity of the

affected person were required or would have the Respondents

Respondents already based on the information in the request for information of October 29th

2018 can identify?

According to the findings, the complainant already when submitting the

request for information sent a copy of his ID, information on his date of birth

and his home address and information about his last home savings contract

announced. Furthermore, he sends his request for information electronically from the E-

Mail address "p.a\*\*\*@a\*\*-h\*\*-o\*\*.at" together with his PGP key.

In this context, a PGP key is used on the one hand for confidentiality

Encryption, on the other hand authentication by means of signing. the

The Respondent can therefore assume that the e-mail actually came from the

address "p.a\*\*\*@a\*\*-h\*\*-o\*\*.at". This is in the submissions of

Respondent also acknowledged. It is also true that a PGP key does not

qualified electronic signature iSd § 4 SVG.

However, an electronic request for information does not necessarily have to be accompanied by a qualified

be provided with an electronic signature. A qualified electronic signature is

a means by which proof of identity can be provided, but nothing speaks

against providing proof of identity by other means, since the GDPR

- as already stated - does not specify any specific form of identification.

In any case, a copy of an ID card is suitable proof of the identity of a person

information seeker. Information on a former home savings contract is also not without

others are publicly available and can be taken into account in the identification.

The sender e-mail address used for sending the request for information

Address (which verifiably comes from the domain "a\*\*-h\*\*-o\*\*.at") is for identification

suitable because a "Whois query" from the domain owner returns the name "Peter A\*\*\*"

and the "A\*\*H\*\*O\*\* - A\*\*\* H\*\* & Partner Rechtsanwälte limited partnership" results.□

Because a controller should use all reasonable means of identification, a□

such a simple (and free) "Whois query" is at least reasonable. Furthermore, the□

Respondent, insofar as she still had reasonable doubts about the identity,□

can also check the website of the Austrian Bar Association□

which there is a public entry on the complainant that has this information□

confirmed.□

In principle, there is no objection if the Respondent states that□

As a licensed bank, it has a special duty of care. Such□

However, due diligence does not allow concrete forms of identification□

to prescribe Insofar as the information provided by an information seeker already indicates a high□

Degree of reliability in terms of proof of identity is of the□

to refrain from requesting additional information.□

Even the reference to banking secrecy under Section 38 BWG does not justify this□

Prescribe concrete possibilities of identity verification. Had the legislature for□

Required in relation to the request for information from concessionaires□

Credit institutions to set special requirements, he would have benefited from the opening clause of the□

Art. 23 GDPR used and, for example, in the BWG to protect the□

person concerned has made increased identification requirements. But since there is none□

If there are special requirements for this, the reverse conclusion is that the GDPR□

is used without restriction, i.e. in particular the identification of none□

specific requirements.□

It is true that according to Article 38 BWG family members are also considered third parties,□

but in the present case there was no concrete evidence at all for that□

Assumption that the request for information was made by an unauthorized family member□

was asked. As already mentioned, the sender e-mail address enabled□

already in itself the identification with a high degree of reliability, the□

Combination with a copy of your ID and information on previous home savings contracts□

further reinforces this.□

In view of the above, it would be the Respondent's basis□

of the information provided by the complainant without any problems□

to identify information seekers. The refusal to comply with the request for information□

correspond, was therefore not justified and it had to be decided according to the verdict.□