

GZ: 2020-0.239.741 from April 21, 2020 (case number: DSB-D124.2228)□

[Note Editor: Names and companies, legal forms and□

Product names, addresses (including URLs, IP and email addresses),□

File numbers (and the like), etc., as well as their initials and abbreviations□

abbreviated and/or changed for reasons of pseudonymization. obvious□

Spelling, grammar and punctuation errors have been corrected.□

The decision has been pseudonymised with particular care because of the□

However, multiple media coverage of the underlying incident may□

not excluded that the complainant of readers with□

corresponding knowledge and skills in Internet research□

can be. The complainant's interest in secrecy in this regard□

does not outweigh the public interest in the legal through § 23□

Paragraph 2 DSG required publication of the decision.]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint of Dr. Paul□

A*** (complainant) of February 26, 2020 against N***-Verlag Digital GmbH□

(Respondent), represented by B*** Rechtsanwälte GmbH, H***weg *3*,□

**** K***stadt, due to violation of the right to erasure as follows:□

- The complaint is rejected.□

Legal basis: Art. 77 (1) and Art. 85 (2) of Regulation (EU) 2016/679□

(General Data Protection Regulation,□

hereinafter: GDPR), OJ No. L 119 of□

May 4, 2016 p. 1; Section 9 (1) 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 February 26, 2020, the complainant claimed a
Violation of the right to erasure. On February 4, 2020 he had the deletion of a
Article on the Respondent's platform at the Internet address
https://www.n***-digital.net/soziale-medien-blamieren-polizeichef-a-*/3*2*10
requested. However, by letter dated February 24, 2020, the Respondent
informed not to comply with the request for deletion.

2. In a statement dated April 8, 2020, the Respondent submitted that
the personal data contained in the incriminated editorial contribution
(of the complainant) would be processed for journalistic purposes and
thus the media privilege of § 9 DSG is applicable. So he would
The complainant's claim for cancellation will come to nothing and be the complaint
to be rejected due to the lack of competence of the data protection authority.

3. The complainant brought - according to the parties to the results of the
preliminary proceedings - summarized with a statement of April 15, 2020,
that this standard (§ 9 DSG) is not a license for derogatory remarks ("laughing point")
may be. The presentation would go beyond journalistic purposes. The public
probably have no interest in such representations being public.

B. Subject of Complaint

Based on the submissions of the parties, it follows that it must first be examined whether the
Data protection authority for the substantive handling of the complaint in question
responsible is.

C. Findings of Facts

1. The Respondent operates an online daily newspaper at [https://www.n***-](https://www.n***-digital.net/)
digital.net/ ("N*** Digital"), in which regular online articles on daily updated
topics are published.

The Respondent has under the link https://www.n***-digital.net/soziale-

medien-blamieren-polizeichef-a***/*3*2*10 published the following article (excerpt, □

Formatting not reproduced 1:1): □

[Editor's note: The one at this point in the notification is reduced but complete □

and □

reproduced in the original web design including the logo of the medium □

Media report cannot be pseudonymised and has therefore been removed. He treats □

an incident in which the complainant's documented conduct on □

Telephone to a police emergency operator on the subject of mockery in □

various social media.] □

The complainant is a former [function of □

complainant in the hierarchy of the Austrian security authorities] des □

State L***. In the above online article is a YouTube video □

embedded, which is a conversation between the complainant and a □

employees of the police emergency call service L***. Below the online article □

Twitter posts are embedded that refer to this police emergency call □

take a recording of the conversation. □

The police emergency call recording is as follows: □

[Editor's note: The one reproduced in full at this point in the notification □

telephone dialogue in which the complainant calls the police emergency number to □

To request a police patrol, and the employee who didn't answer his voice immediately □

recognizes and doubts its identity and function, brushes it off, for the next □

weekday summoned to his office to read him the riot act there, and to him □

threatens disciplinary proceedings cannot be meaningfully pseudonymised. from one □

literal reproduction is therefore avoided.] □

Evidence assessment: The findings made are based on an ex officio □

Research the webpage at https://www.n***-digital.net/ □

as well as below□

https://www.n***-digital.net/soziale-medien-blamieren-polizeichef-a***/*3*2*10□

accessed April 21, 2020). The conversation recording□

is i.a.□

in a□

parliamentary question of *4 [month] 2019, *1*7/J XXVII. GP, documented,□

https://www.parlament.gv.at/PAKT/VHG/XXVII/J/J_00*1*7/imfname_7*32**2.pdf□

(accessed April 21, 2020).□

2. On February 4, 2020, the complainant submitted the following application to the□

Respondent asked (formatting not reproduced 1:1):□

"From: Paul.A***@bmi.gv.at <Paul.A***@bmi.gv.at>□

Sent: Tuesday 4 February 2020 13:59□

To: highspeed domain admin <domain-admin@n***-digital.net>□

Subject: Deletion of personal data in accordance with GDPR□

Ladies and gentlemen!□

The one of you under the et al. Link still visible post "Social media□

embarrass police chief #A***-N***-DIGITAL.NET" is no further in the sense of the GDPR□

allowed. I therefore ask you to remove this from your website. You shouldn't□

in an appropriate manner, I ask you to justify. Further steps -□

Proceedings before the data protection authority - I reserve the right.□

[Editor's note: At this point, a link to the search result is an original□

major internet search engine.]□

Kind regards□

dr Paul A***"□

The Respondent informed the Appellant by letter dated February 24□

2020 the following message was sent (formatting not reproduced 1:1):□

"By: Gerda J*** <Gerda.J***@n***-verlag.net>□

Sent: Monday 24 February 2020 4:49 p.m.□

To: A*** Paul (****) <Paul.A***@bmi.gv.at>; N***-Verlag Privacy Policy <datenschutz@n***-
verlag.net>□

Subject: AW: Deletion of personal data in accordance with GDPR□

Dear Mr A***,□

With a deletion request dated February 4th, 2020, you asked us to delete a contribution from□

to delete our platform. Unfortunately, the media owner and publisher of the□

platform, the N***-Verlag Digital GmbH, will not follow your request for deletion, since this□

Contribution for the purpose of freedom of expression and freedom of information□

was published. Section 9 (2) of the Data Protection Act provides that the rights□

of the data subject - including the right to be forgotten - does not apply□

Find□

([https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=bundesnormen&Gesetzesnumme
r=10001597](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=bundesnormen&Gesetzesnumme
r=10001597)).□

If you exercise your right to lodge a complaint with a supervisory authority□

want is the Austrian Data Protection Authority, Barichgasse 40-42, 1030 Vienna□

responsible.□

Kind regards□

The data protection team of the N***-Verlag Group"□

The complainant then lodged a complaint with the□

data protection authority. The online article in question was published by□

Completion of the procedure not deleted.□

Evidence assessment: The findings made are based on the input of the□

Complainant dated February 26, 2020 and the submitted correspondence□

between the complainant and the respondent.□

D. In legal terms it follows that:□

1. General information on the media privilege according to Section 9 (1) DSG□

In § 9 DSG, the previous data protection law media privilege according to § 48□

DSG 2000, Federal Law Gazette I No. 165/1999 as amended to Federal Law Gazette I No. 132/2015, with expanded□

Scope transposed into the GDPR system. The national regulation□

in § 9 DSG is linked to Art. 85 GDPR, a basic provision including□

Opening clause, and expands the scope of the□

Privilege on any processing of personal data related to journalistic□

(paragraph 1 leg. cit.) or scientific, artistic or literary (paragraph 2□

leg. cit.) purposes. One can therefore of a data protection law□

Freedom of information privilege (hereinafter only: "privilege") speak (cf. mutatis mutandis□

Suda/Veigl in Gantschacher/Jelinek/Schmidl/Spanberger, Data Protection Act1 § 9□

Margin no. 1, still with reference to § 9 DSG as amended by Federal Law Gazette I No. 165/1999 as amended by Federal Law C

[Data Protection Amendment Act 2018]).□

However, the national legislature restricts the privilege under Section 9 (1) DSG,□

by making the privilege accessible only to media companies or media services,□

if personal data for journalistic purposes by media owners,□

Publishers and media workers or employees of a media company□

or media service are processed.□

Processing of personal data for journalistic purposes follows□

the understanding of the ECJ if the processing has the sole aim of□

To disseminate information, opinions or ideas to the public (cf. the judgment□

of the ECJ of December 16, 2008, C-73/07 - Satakunnan Markkinapörssi and□

Satamedia, margin no. 62).□

To understand the importance of freedom of expression in a democratic□

Society must take into account terms such as journalism, which relate to□

refer to this freedom, as a result be interpreted broadly (recital 153 last sentence□

GDPR). This means that data is always used for journalistic purposes□

processed if the objective is to publish for an indefinite period□

group of people□

is□

(cf. Buchner/Tinnefeld□

in Kühling/Buchner, data protection□

Basic Ordinance² Art. 85 margin no. 17).□

2. In the matter□

For the present case, these considerations mean the following:□

For the applicability of the privilege according to § 9 Abs. 1 DSG it makes no difference□

Difference whether personal data (offline) in a print medium or (like□

objective) are published in an "online daily newspaper" (cf. the□

Notification of the DSB of August 13, 2018, GZ: DSB D123.077/0003-DSB/2018).□

The Respondent is undisputedly a media company□

which as media owner□

for the□

Content of the online news platform□

https://www.n***-digital.net/ ("N*** Digital") is responsible.□

In addition, the relevant data of the complainant□

in the context of a journalistic article aimed at indefinitely□

large group of people about the official behavior of a high official ([function□

of the complainant in the hierarchy of the Austrian security authorities]□

of the federal state L***), processed and subsequently published.□

If the complainant remarks in this context that it is□

Denigrations (the complainant was a "laughing stock") act, is him□

to counter that the use of such language in the context□

the publication of information related to persons - which is classified as "secondary purpose"□

aims to provoke or shock – does not harm (cf. ECtHR□

February 21, 2012, 32131/08 and 41617/08 [Tuşalp vs. Turkey] marginal number 48, according to which the□

Language - although it may be offensive or even shocking - as□

stylistic device is in principle also protected by Art. 10 ECHR).□

One may arrive at a different assessment if the publication alone□

pursues the purpose of willful disparagement, which is not the case here,□

because - as already explained above - the public (also) about grievances in the□

administration should be clarified.□

The data was therefore processed for “journalistic purposes” as defined above□

considerations.□

Since both requirements (processing of personal data by a□

media company for journalistic purposes of the media company).□

are, § 9 para. 1 DSG applies.□

3. Competence of the Data Protection Authority□

The privilege under Section 9 (1) DSG excludes the application of Chapter VI GDPR□

("independent supervisory authorities"). Not by privilege□

the application of the provisions of Chapter VIII GDPR is excluded□

("Remedies, Liability and Penalties").□

It is true that Art. 77 GDPR (in Chapter VIII) also in the scope□

of § 9 Para. 1 DSG and Art. 85 Para. 2 GDPR applies.□

However, Chapter VIII cannot be viewed in isolation from Chapter VI, which□

in particular, the competence (Art. 55 GDPR) of the supervisory authorities is standardized.□

The right of appeal to the data protection authority granted in Art. 77 GDPR is□

accordingly, as well as the imposition of a fine by the data protection authority□

excluded, especially since the authority to issue orders and impose sanctions□

Data protection authority (Chapter VI, in particular Art. 58 Para. 2 lit c and i DSGVO) for□

Data processing under the protection of the privilege does not apply (cf. mutatis mutandis□

Suda/Veigl in Gantschacher/Jelinek/Schmidl/Spanberger, loc.cit. margin no. 2).□

Incidentally, it should be pointed out that the privilege under Section 9 (1) DSG□

expressly also the application of the provisions of Chapter III GDPR□

("Data subject rights") and thus the exercise of the right to erasure□

according to Art. 17 GDPR would not be considered. A legal protection is due□

this legal situation only according to the provisions of civil law (in particular according to□

the MedienG) possible.□

4. Result□

Against the background of these considerations, the data protection authority is in the result□

not competent to deal with the complaint in question, why□

was to be decided according to the verdict (cf. on the lack of jurisdiction in the case of § 9 para. 1□

DSG the decision of the DSB of August 13, 2018 aaO and to that extent□

Comparable legal situation according to the DSG 2000 the decision of the DSB of June 27th□

2016, GZ: D122.455/0003-DSB/2016).□