

GZ: DSB-D122.913/0001-DSB/2019 from April 18, 2019□

[Note editor: Names and companies, legal forms and product names,□

Addresses (incl. URLs, IP and e-mail addresses), file numbers (and the like), etc.,□

as well as their initials and abbreviations can be used for pseudonymization reasons□

be abbreviated and/or modified. 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 Ing. Dieter□

A\*\*\* (complainant) of April 27, 2018 against the Municipality of Vienna,□

Municipal Department 36 (Respondent), for violation of the right to information□

as a result of incomplete provision of information as follows:□

- The appeal is dismissed.□

Legal basis: §§ 1, 24 paragraph 5 and paragraph 6, § 69 paragraph 4 of the Data Protection Act□

(DSG), Federal Law Gazette I No. 165/1999 as amended; Art. 15 of Regulation (EU) 2016/679 (data protection□

Basic Regulation - GDPR), OJ No. L 119 p. 1., § 17 of the General□

Administrative Procedures Act 1991 (AVG), Federal Law Gazette No. 51/1991 as amended.□

REASON□

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

1. In his submission of April 27, 2018 (and the□

Improvement from June 2, 2018) to the data protection authority essentially before that□

Respondent did not fully respond to his request for information. the□

Attached to the complaint was the request for information from October 1, 2017, with which the□

Complainant an information according to § 26 DSG 2000 to decision ZI. MA 36-4\*2\*7-□

2016-N (N stands for all documents) from the Respondent, in particular□

regarding the e-mail of the notifier regarding this procedure. He has access to the files□

Complainant received from Respondent in February 2017.□

2. The Respondent stated in a letter dated September 7, 2018 that she had one□

Complainant reported defective electrical installations on□

Location R\*\*\*straße \*5, 1\*\*\* Vienna, received in 2016, whereby the advertiser at□

requested confidential treatment of his name. After setting the□

In the course of the procedure, the complainant had requested access to the files. the□

The Respondent complied with this and sent a copy of the file to ZI. MA 36-□

\*4\*2\*7-2016 mailed to the complainant. Those parts of the file□

from which the name of the advertiser emerges are, according to § 17 para. 3 AVG□

exempted from access to the files. From the point of view of the□

Respondent not to be set.□

3. In the granted hearing of the parties to the Respondent's statement (letter□

of the data protection authority of 25.10.2018) the complainant within the□

granted a period of two weeks.□

B. Subject of Complaint□

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

The subject of the complaint is whether the advert is from 2016 and□

in particular its contributors, are covered by the right to information, although the□

Access to files was denied in accordance with Section 17 (3) AVG.□

C. Findings of Facts□

1. The respondent is responsible for technical business matters, official□

Electrical and gas affairs, fire police and event management in the city□

responsible for Vienna.□

Evidence assessment: Official inspection of the website of Municipal Department 36□

at <https://www.wien.gv.at/kontakte/ma36/tasks.html>□

2. On May 4, 2016, the Respondent received a complaint against the□

Complainant because of defective electrical installations at the location R\*\*\*straße \*5,□

1\*\*\* Vienna. The address R\*\*\*straße \*5/1, 1\*\*\* Vienna, is in the complaint as the delivery point□

stated by the complainant. The advertiser wanted the confidential□

treatment of his name. The Respondent led under ZI. MA 36-\*4\*2\*7-2016□

an investigation against the complainant, which was subsequently discontinued.□

After the termination of the proceedings, the complainant requested access to the files□

ZI. MA 36-\*4\*2\*7-2016. The Respondent granted access to the files in□

February 2017 by sending a copy of the file, with those□

File components from which the advertiser emerged from the file inspection□

according to § 17 Abs. 3 AVG were excluded. The complainant confirmed on□

May 14, 2017 receipt of file copy.□

Evidence assessment: The statements made are based on the insofar undisputed,□

written submissions of the parties, which are available in the file.□

D. In legal terms it follows that:□

D.1. General□

The legal situation at the time of the decision of the data protection authority is decisive,□

unless it is a matter of judging a behavior towards a particular□

Time. However, the object of the complaint does not become a specific date□

or period turned off. The alleged infringement (incomplete information)□

still ongoing.□

According to the legal situation applicable from May 25, 2018, this was the case until now□

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

Complaints procedure according to § 24 DSG, Federal Law Gazette I No. 165/1999 as amended, to continue and after□

to decide on the new legal situation (cf. Section 69 (4) DSG).□

D.2. Applicable legislation:□

Art. 15 para. 1 and para. 4 GDPR read together with the title (emphasis added by the□

Data Protection Authority):□

Article 15□

Right of access of the data subject□

(1) The data subject has the right to receive confirmation from the person responsible□

to request whether you are processing personal data relating to you□

will; if this is the case, she has a right to information about this□

personal data and the following information:□

a) The processing purposes;□

b) the categories of personal data being processed;□

c) the recipients or categories of recipients to whom the□

personal data have been disclosed or will be disclosed,□

in particular for recipients in third countries or international organizations;□

d) if possible, the planned duration for which the personal data will be stored□

or, if that is not possible, the criteria used to determine that duration;□

e) the existence of a right to rectification or erasure of data concerning them□

personal data or restriction of processing by the□

controller or a right to object to this processing;□

f) the existence of a right of appeal to a supervisory authority;□

g) if the personal data are not collected from the data subject,□

all available information about the origin of the data;□

h) the existence of automated decision-making including profiling□

in accordance with Article 22(1) and (4) and — at least□

in these cases -□

meaningful information about the logic involved as well as the scope and the□

intended effects of such processing for the data subject.□

(2) [...] (3)□

(4) The right to obtain a copy referred to in paragraph 1b shall not affect the rights and freedoms

not affect other people.

§ 17 AVG reads including the heading (emphasis added by the data protection authority):

insight into files

Section 17. (1) Unless otherwise specified in the administrative regulations, the

Parties can inspect the files relating to their case at the authority and

make copies of files or parts of files on the spot or on their own

Have copies or printouts made at a cost. As far as the authority the matter

keeps the relevant files electronically, the party may, upon request, inspect the files

any technically possible form.

(2) All parties involved in a procedure must be granted access to the files upon request

be granted to the same extent.

(3) Parts of the file are excluded from the file inspection, insofar as their

inspection damage to the legitimate interests of a party or third parties

or jeopardize the tasks of the authority or the purpose of the

would affect the procedure.

(4) Denying access to the file to the party of a pending

Proceedings are carried out by procedural order.

D.3. In the matter itself:

1. The complainant filed a June 2, 2018 improvement

incomplete provision of information applies. A non-disclosure of the information was therefore

not subject of the proceedings.

The complainant believes, in summary, a concrete, substantive

Part of the file - namely a copy of the e-mail advertisement from the advertiser (including

Photos) – which he, as a party to, the proceedings ZI. MA 36-4\*2\*7-2016 within the framework of

Assertion of the right to inspect the files had not received about the

to be able to assert the right to information.□

2. First of all, it should be noted that the previous case law on the right to information according to § 26□

DSG 2000 of information in the sense of a copy of specific file components□

rejected (cf. decision of the Data Protection Commission of June 4, 2001□

to GZ K120.810/005-DSK/2001, notices of June 27, 2012, GZ K121.803/0008-□

DSK/2012, as well as of April 25, 2008, GZ K121.340/0006-DSK/2008, notices of□

March 9th, 2015, GZ DSB-D122.299/0003-DSB/2015, and from October 27th, 2014, GZ DSB-□

D122.215/0004-DSB/2014). On the one hand, this was justified by the fact that § 26 para. 1□

DSG 2000 and the constitutional provision of § 1 Para. 3 Z 1 DSG 2000□

personal data of a data subject are limited, which□

automated processing or for processing in manual files (e.g□

index systems) are determined. On the other hand - based on the quoted□

Constitutional provision and § 26 paragraph 1 DSG 2000 - neither a right to information about□

Third Party Data, nor an enforceable right to obtain copies of deeds. and□

Ultimately, § 26 Para. 8 DSG 2000 stipulated that to the extent that a□

Data application regarding the processed data by law for the□

data subjects can be viewed (i.e. if material legal provisions are available to data subjects□

rights of inspection granted), the data protection right to information in accordance with the provisions□

the material provisions providing for the right of inspection are to be granted, and□

instead, the statutory provisions governing the inspection procedure□

are relevant.□

3. The now applicable DSG also sees in § 4 para. 5 and para. 6 DSG□

Exceptions to the right to information according to Art. 15 GDPR - namely in sovereign□

Area according to § 4 para. 5 DSG if the provision of information is the fulfillment□

would jeopardize legally assigned tasks, in private or in the context of□

Private sector administration in accordance with § 4 para. 6 DSG if the provision of information□

jeopardizes a business or trade secret of the person responsible or a third party□

would. However, both restrictions do not appear to apply in this case.□

4. Therefore, only Art. 15 GDPR ("Right to information□

of the data subject"). The GDPR itself mentions files and□

File collections (still assuming that they are paper files) in□

recital 15 last sentence, whereby these paper files are only not subject to the GDPR□

should fall if the file system criterion is not met, thus an order□

according to certain criteria (thus at least two criteria) does not exist.□

E contrario it can be concluded that electronic files – such as these, among other things, too□

the Respondent uses - at least the GDPR is applicable. recital 63□

2nd sentence mentions that the content of files is fundamentally subject to the right to information□

is subject (arg. "This includes the right of data subjects to information about their□

their own health-related data, such as data in their medical records□

Information such as diagnoses, examination results, findings of the□

treating physicians and information on treatments or interventions").□

Art. 15 Para. 3 GDPR standardizes that the person responsible has a copy of the□

provides personal data, whereby paragraph 4 stipulates restrictively,□

that this does not affect the rights and freedoms of other people□

may.□

From all this it can be deduced that now by means of a request for information in principle□

information about the content of documents and file components may also be requested□

can.□

5. However, according to Art. 15 DSGVO - as before - on your own□

Limited to data, i.e. to data that, according to the wording of Art. 15 Para. 1 DSGVO,□

"they [ie. the data subject] are personal data". Hence□

In principle, there is still no right to information about the□

personal data of third parties, unless there are special reasons in the individual case□

speak in favor of this (cf. e.g. the notification of June 6, 2018, GZ DSB-D122.829/0003-□  
DSB/2018).□

In addition, Art. 15 Para. 4 GDPR standardizes the further restriction that the□

Obtaining a copy of the personal data in any case the rights and freedoms□

must not affect other people.□

Therefore, if a document to be disclosed (a “copy”) contains data from third parties,□

to carry out a weighing of interests and the data of third parties are only to be disclosed if□

if the reasons for disclosure outweigh the reasons for secrecy.□

6. In the present case, the express wish of the advertiser persisted□

confidential treatment of his complaint. Predominant reasons for a disclosure□

would give priority to secrecy were dated□

Complainant not presented.□

Consequently, Art. 15 Para. 4 GDPR requires a copy of the e-mail notification to be transmitted□

opposite□

7. The complaint was therefore to be dismissed as unfounded.□