

GZ: 2020-0.288.477 from May 11, 2020 (case number: DSB-D124.137)□

[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□

over□

the privacy complaint□

of□

Dipl. Ing.(Univ.) Richard A*** (appellant) from W***, Germany, on 1 February□

2019 against the University [of Art] N*** (Respondent) for violation of law□

on secrecy as follows:□

~ The complaint will be followed up and it will be established that the□

Respondent the complainant by the fact that on January 30, 2019□

his e-mail address a***@architekt***.de as part of an open, for all 56□

Recipient visible mailing list (CC dispatch) of an electronic mail with the□

Subject "Schedule Professorship Architecture" used, in its g u n d r e c h t a f□

has violated the secrecy of personal data.□

Legal basis: Section 1 (1) of the Data Protection Act (DSG), Federal Law Gazette I No. 156/1999 as amended,□

Article 5(1)(c), Article 6(1)(e), Article 57(1)(f) and Article 77(1) of the Ordinance□

(EU) 2016/679 (General Data Protection Regulation, hereinafter: GDPR), OJ No. L 119 of□

May 4, 2016 p. 1; §§ 18 para. 1 as well as 24 para. 1 and para. 5 DSG.□

REASON□

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

1.□

In his data protection complaint dated February 1, 2019 (with supplement of□

February 2, 2019), improved□

in the sense of a defect rectification order□

DPA by letter dated March 14, 2019, brought the complainant□

submits that the Respondent violated Art. 5 when processing his data□

and 6 GDPR and thereby his fundamental right to secrecy□

personal data□

injured. Concrete□

may be□

it□

in the□

Trains□

one□

Application procedure for a professorship with the respondent on January 30□

2019 to send an e-mail reply addressed to him (transmission of the□

envisaged timetable for the procedure) to 55 other recipients in the “open□

distribution list” (CC). As a result, he suffered damage to his reputation and that□

entire application process was "corrupted and reissued". The procedure□

must be repeated.□

2. The Respondent held that in its statement of August 21, 2019□

Against the following: The Respondent has a professorship for□

architecture advertised. Each applicant, including the complainant,□

must comply with the procedures applicable to the appeal to this body□

subject to legislation. Pursuant to Section 9 Paragraphs 2, 6 and 7 of the applicable Articles of Association□

for appointment procedures for university professors□

according to § 98 UG 2002 of the university [for art] N*** every applicant has to□

reckon that his application will become public, since there is a public hearing□

is intended. The Respondent conducts correspondence with the applicants□

basically individually and by e-mail, and it was right that accidentally one□

Letter regarding the timetable as put forward by the complainant, with the□

visible collective distribution list. But the complainant could not□

Disadvantage arising from the fact that the 54 other applicants to□

the job had become known about his application in this way.□

3. According to the parties, the complainant has heard the results of the□

preliminary investigation□

(with procedural order of the data protection authority dated□

February 19, 2020, GZ: 2020-0.075.880) no further statement was made.□

B. Subject of Complaint□

4. On the basis of the complaint, it follows that the subject of the proceedings□

The question is whether the Respondent thereby deprived the Complainant of his rights□

on secrecy that she has violated in an ongoing appeal for a□

professorship on January 30, 2019 via e-mail regarding the schedule□

shipped in a manner that allowed competitors to name and□

to become aware of the complainant's application for the position.□

C. Findings of Facts□

5. The Respondent is a university (name according to § 6 Para. 1 Z ** UG 2002), so□

according to § 4 UG 2002 a corporation under public law.□

6.□

In November 2018, the Rectorate of the respondent at Institute R*** received a□

University professorship for architecture according to § 99 Abs.1 UG 2002 in half□

Extent of employment brought to tender.□

7. The complainant, who is an architect by profession (co-owner of the architect office u***□

& a*** in D-**** W***, www.architekt***.de), submitted (with notification of the e-mail□

address a***@architekt***.de) an application for this position.□

8. On January 30, 2019, an employee of the Respondent sent an email□

including the timetable for the procedure for appealing the advertised□

professorship with□

following head and distributor□

(email address of□

Complainant highlighted by underlining and bold type):□

"From: S***, Peter peter.s***@uni***.at□

Subject: Schedule Professorship Architecture□

Date: January 30, 2019 09:28□

To: S***, Peter peter.s***@uni***.at□

Copy: office@rud***.com, otto.i***@uibk.ac.at, karl.g***@g***-t***.at, h***@o***.archi,□

theo****@gmail.com, for***@gmail.com, je****@p****.net, karin.s***@gmail.com,□

office@l***-architektur.at, m***@f-g***.at, architektur@****ecke.cc, office@hhh***.at,□

robert-v***@****buero.com, architektur@m***-q***.com, z***.arno@gmail.com,□

u***@trieb***.at, b***@***architekten.com, office@****londo**.at, Atelier L***□

office@l***.at, contact@***ons.at, erich@erich-z***.at, d***.hanno@****platz.com,□

office@***bau.at, c***.janez@o***.at, t@t***.com, office@hoch***.at,□

U***@construct***.com, info@***brothers.com, y-x@ue***partners.com,□

office@bau***.space, architektin@****sisters.ch, silvie.e***@utanet.at,□

paul.o***@gmail.com, re@r****-architects.com, pjotr@trans***.org, office@***-□

architekten.de, josef.f***@f***-k***-architekten.com, w****@tu***.at, l.korko***@gmx.at,□

labor@experiment-***.cc, architecture@rosma***.hu, a***@architekt***.de, □

u***@gmail.com, design@futurelife***.com, wald***@s***.edu, □

tanja.w***@trans***.edu, office@build***.com, G*** Otto U*** □

o.u***@***architecture.sk, office@ii***.at, office@urban***.net, hanno.q***@z***.eu, □

mail@o***-j***.at, *r@g***.at, ***novic@gmail.com, office@daniel-verdi***.it, □

walter***@***pot.com" □

9. Evidence assessment: These findings are based on the one hand on legal □

fixed, and thus generally known facts, on the other hand on the website □

the □

Respondent □

(URL: □

https://www.uni***.at/Jobs- □

Detail.*41**+M***k**c86e3c6.0.html, accessed May 8, 2020) are still available □

job description and a copy of the □

e-mail in question, submitted by □

Complainant attached to the amended complaint dated March 14, 2019 (PDF, □

entrance piece □

in GZ: DSB-D124.137/0002-DSB/2019). The statements on □

professional activities of the complainant are based on his submissions as well as □

the content of the website www.architekt***.de (accessed on May 9, 2020). The facts □

of this complaint matter are not disputed between the parties as a whole. □

D. In legal terms it follows that: □

Total: □

10. The complaint has proven to be justified. □

applicable legislation: □

11. Pursuant to Art. 5 Para. 1 lit. a and c GDPR (heading: "Principles for processing □

Personal Data") must process Personal Data lawfully, ☐

in good faith and in a manner that is comprehensible to the person concerned ☐

are processed ☐

("lawfulness, fair processing, ☐

Transparency") and adequate and relevant to the purpose and to what is necessary for the purposes ☐

be limited to the extent necessary for processing ("data minimization"). ☐

12. Pursuant to Art. 6 Para. 1 GDPR (heading: "Lawfulness of processing") is a ☐

Processing of personal data is lawful only if at least one of the ☐

the following conditions are met: the data subject has given their consent ☐

the processing of the personal data concerning you for one or ☐

given several specific purposes (lit. a); the processing is necessary for the fulfillment of a ☐

contract to which the data subject is a party, or for the execution ☐

pre-contractual measures required at the request of the data subject ☐

take place (lit. b); the processing is necessary to fulfill a legal obligation ☐

required to which the person responsible is subject (lit. c); the processing is necessary ☐

to vital interests of the data subject or another natural person ☐

protect person (lit. d); the processing is for the performance of a task ☐

necessary, which is in the public interest or in the exercise of public authority ☐

takes place, which was transferred to the person responsible (lit. e); the processing is to ☐

Protecting the legitimate interests of the controller or a third party ☐

required, unless the interests or fundamental rights and freedoms of ☐

data subject who require the protection of personal data prevail, ☐

in particular if the data subject is a child (lit. d). ☐

Lit. f does not apply to that carried out by public authorities in the performance of their duties ☐

Processing. ☐

13. According to § 5 UG 2002, the Respondent has her duties according to § 3 UG 2002 ☐

within the framework of the laws and ordinances without instructions and is entitled to

their statutes (these are the regulations provided for in § 19 UG 2002) in the

To give within the framework of the laws in accordance with Art. 81c Para. 1 B-VG itself. The

Bodies of the Respondent are also assigned official tasks (see

in particular § 46 UG 2002).

Respondent's data protection status:

14. The Respondent

is, as stated, one established by law

Public corporation to which sovereign tasks have been delegated. In the

Appointment to the post of university professor is a matter of a

§§ 98 f UG 2002 and within the framework of university self-government

procedure regulated by the Respondent's statutory statutes. the

The respondent was therefore in the sense of Art. 6 para. 1 last sentence GDPR here as

Authority active in the performance of its tasks, regardless of the question of which

Organs had to decide in individual cases, and whether this in individual cases by decision

or other acts such as the conclusion of contracts.

For this case of complaint it also follows:

15. The use of data processing within the meaning of Art. 4 GDPR

electronic communication system e-mail by the Respondent

in view of the state of the art and in an overall view of the legal

Framework (cf. in particular § 37 Para. 1 ZustG) to be regarded as admissible and can

are based on data protection law on Art. 6 (1) lit. e GDPR, since there is no

legal obligation (Art. 6 para. 1

lit. c GDPR) for the use of this

electronic communication system has existed, but the processing for the

Performance of a task (implementation of the appointment procedure

for the

advertised professorship with applicants from Germany and

abroad) was required, which was in the public interest and in the exercise of public

Violence ensued, which was handed over to those responsible.

16. It follows that no express consent (Article 4 Z 11 GDPR) of

Complainant was required to provide his email address for lawful purposes

of communication and delivery.

17. The Respondent, as the person responsible for the processing, has against the

violate the principle of data minimization in accordance with Article 5 (1) (c) GDPR. From the

established facts and the admission of the Respondent that

Shipping was only "inadvertently" in this way, the conclusion is that

that the Respondent's employee who sent the message

has, the main addressing - as for such cases of sending to a

Address distribution list artfully correct - although made to your own address, it

but from a non-determined and for the result of this procedure also not

has failed to send a total of 56 e-mail addresses of the

distributor in the "Blind Carbon Copy – BCC" field, which allows them to

individual recipients would not have become aware of. Instead, it will be sent

by entering in the "Carbon Copy - CC" field, giving each holder one of the 56th

used e-mail addresses the e-mail addresses of the 55 other recipients

came to knowledge.

18. In the case of the complainant, who is identified by a combination of his (surname) and the

Internet domain of his architect's office existing e-mail address identifiable

was, was determined by the composition of the distribution list in connection with the content of the

Message also disclosed that he had applied for the advertised position.

19. For the purpose of the processing pursued here, there is no reason why not

BCC delivery could have been used as a data-saving method.□

The data protection authority assumes that this was a one-time mistake.□

20. Contrary to what the Respondent put forward, it does not come down to one□

assessment of the complainant's eligibility for protection. It is quite possible□

that the data transmitted here is at a different stage of the appeal process□

should have been disclosed, for example in connection with a public□

Hearing of shortlisted applicants. This changes□

but nothing about the fact that the assessed processing operation would not have taken place in this way□

may. For assessing the legality of the complaint□

processing operation, the question of protection can also be disregarded□

remain, since even a reduced worthy of protection in the sense of the purely national□

Constitutional provision of § 1 para. 1 DSG by no means a clearly established one□

violating the principle of data minimization of Union law□

can.□

21. The Respondent therefore upholds the Complainant's fundamental right□

Confidentiality according to § 1 Abs. 1 DSG violated, and it was therefore the verdict□

to make findings (see also the notification of June 24, 2019, GZ DSB-□

D124.421/0003-DSB/2019).□

22. Finally□

is□

to note□

there□

a submission in this regard□

Complainant (without express application) to justify his□

Complaint is that the assessment of whether the of the□

Respondent conducted appeal proceedings was lawful, not in□

area of responsibility of the data protection authority.□