GZ: DSB-D122.831/0003-DSB/2018 from 4.6.2018

[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 Mrs. Nora's data protection complaint

A*** (complainant) of December 20, 2017 against the Vienna City Administration

– MA 63 (Respondent) for violation of the right to secrecy as follows:

˜ The complaint is upheld and it is established that the

Respondent thereby waives the right of the complainant

Secrecy violated by allowing unauthorized access at least on

November 28, 2016 (time: 14:10:10), on January 3, 2017 (time: 08:44:47),

March 28, 2017 (time: 18:46:28 and 20:56:21) and on April 12, 2017

(Time: 09:05:51) on her electronic health record (her electronic

medical history) existed.

Legal basis: Sections 1, 24 and 69 of the Data Protection Act (DSG), Federal Law Gazette I No.

165/1999 as amended; Article 57(1)(f) and Article 77 of Regulation (EU) 2016/679

(General Data Protection Regulation - GDPR), OJ No. L 119 p. 1.

REASON

A. Submissions of the parties and course of the proceedings

1. The complainant, who works in the hospital **** Vienna, **** institute, is,

submitted a complaint regarding a complaint pursuant to Section 31 (2) DSG 2000

(as amended by Federal Law Gazette I No. 83/2013) of December 20, 2017 to the data protection authority and

stated that without official necessity access to their data in their

electronic health record had taken place, which were unjustified.

2. The data protection authority initiated based on the complainant's submission

Complaints procedure for GZ D122.831 and asked the respondent to do the same

Letter dated January 15, 2018 for comment.

3. The Respondent informed in a letter dated February 6, 2018 that after

Evaluation of the access logs implausible access to the electronic

Health record of the complainant and subsequently its inadmissibility

were found. The HR department should deal with this matter

been initiated.

4. The data protection authority granted the complainant by letter dated 13

February 2018 party membership.

5. The complainant has not replied within the time limit in these proceedings.

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

has thereby violated its right to secrecy by unauthorized access

on their electronic health record.

C. Findings of Facts

1. The complainant is a clerk of the municipality of Vienna im

Hospital **** Vienna, **** Institute, employed.

2. The complainant requested on November 26, 2017 by email to the

Data controller of the hospital **** Vienna for information who from the period

09/2015 accessed their data:

[Editor's note: The e-mail reproduced here in the original as a facsimile

Correspondence cannot be exchanged for legal documentation purposes with reasonable effort

be reproduced pseudonymised. In summary, the

complainant, providing identification data (including name, e-mail

address, personnel number and user IDs used) for information. On December 6th

In 2017, the complainant was surrounded by an employee of the hospital ****

asked to participate and at the same time provided information. Specifically, in a table

one access in 2016 and four accesses in 2017 to patient data

Appellant listed as apparently "not plausible" and the Appellant

asked for their assessment. In the reply e-mail of the same day, the

Complainant only one of the accesses from 2017 (under the keyword

"emergency medicine") as plausible.]

Evidence assessment:

These findings are based on the submissions of the appellant dated

December 20, 2017 and the attachments there, in particular the answer to the

Request for information by the respondent on December 6, 2017, and the

Respondent's statement of February 5, 2018.

D. In legal terms it follows that:

1. General:

In accordance with the legal situation applicable from May 25, 2018, this was previously in accordance with Section 31 (2).

DSG 2000, Federal Law Gazette I No. 165/1999 as amended by Federal Law Gazette I No. 83/2013, procedures as

Complaints procedure according to § 24 DSG, Federal Law Gazette I No. 165/1999 as amended, according to the

To continue the provisions of the DSG and the GDPR (cf. Section 69 (4) DSG).

2. Regarding the competence of the data protection authority:

According to Art. 57 Para. 1 lit. f GDPR, every supervisory authority in its sovereign territory

deal with complaints from a data subject.

According to § 24 paragraph 1 DSG idgF, every person concerned has the right to lodge a complaint

the data protection authority if it considers that the processing of you

relevant personal data against the GDPR or against § 1 or Article 2□

1. Major breaches.□

The complainant complains that her rights have been violated□

Confidentiality of personal data concerning you.□

The data protection authority is therefore responsible for the decision.□

3. Timeliness:□

According to Section 24 (4) DSG, the right to have a complaint dealt with expires if□

the intervener not within one year after becoming aware of the□

adverse event, but at the latest within three years after that□

event of alleged dimensions has taken place.□

The complainant has the information from December 6, 2017 for the first time□

gained knowledge of unauthorized access. Even if one of the complainant□

Assume knowledge of the adverse event as of November 26, 2017□

would be the application (complaint pursuant to Section 31 (2) DSG 2000) of December 20th□

2017 to the data protection authority in a timely manner.□

4. In the matter:□

Based on the established facts, it is undisputed that it is one of the loud□

Query log cited unauthorized access. These accesses□

by an employee of the respondent could by the□

Respondents are not explained. These were even claimed by the Respondent□

Access marked as inadmissible.□

It was therefore necessary to make the statement stated in the ruling (cf. also the□

Decision of the former Data Protection Commission of October 25, 2013,□

GZ K121.990/0016-DSK/2013).□