

GZ: DSB-D123.652/0001-DSB/2019 from July 4th, 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. Paul A***□

(appellant) of October 22, 2018 against the N*** shopping center owned and□

Betriebs AG (Respondent) for violation of the right to secrecy such as□

follows:□

- The complaint is dismissed.□

Legal bases: § 1 para. 1 and para. 2 as well as § 24 para. 1 and 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 submission of October 22, 2018 (ha. received on October 24, 2018) and his□

supplementary statement of November 10, 2018 (ha. received on November 10□

2018), the complainant alleged a violation of the right to secrecy.□

In summary, the N*** shopping center has an underground car park for customers□

and employees, where a few hours can be parked free of charge, depending on the time of day□

could. For a few weeks now, the number plate has been used at the entrance and exit□

scanned electronically and with the database at every entry and exit□

matched. A hint is on a standing sign above the entry tickets□

issuing column attached to the barriers. On this sign are the tariffs□

specified, at the bottom is the reference to the electronic license plate recognition.□

This information sign is set up in such a way that you can only read it when you are next to it□

stand the pillar. At this point in time, license plate recognition is already in place□

closed. There is therefore no possibility after taking note of the information□

to reject license plate recognition, and no consent is obtained.□

2. With a statement dated December 20, 2018, the Respondent brought□

summarized, that the H*** Garagengesellschaft GmbH & Co KG□

is the processor and handles the garage operation for the respondent.□

The processing in question is based on legitimate interests. In the□

License plate recognition takes place using optical image processing, in which the□

License plate converted into text characters and in the respective garage database□

will be saved. This is because some garage users use the license plate as□

Use parking medium. The garage user has the advantage that the barriers□

open by itself and no parking card or other parking medium is presented□

must. Fast and efficient entry and exit is guaranteed. About it□

In addition, the license plate recognition also serves the purpose that the contractually compliant□

Garage use can be controlled. Unfortunately, it happens that the free□

Parking usage for a certain period of time will be exploited by cars several times□

would drive in and out in quick succession. In addition, with the□

License plate recognition to verify that the vehicle's ticket number is on the□

exit match the assigned license plate number. Unless this is the case□

be, do not open the exit barriers and there could be the possible theft of one□

vehicle can be prevented. The data would only be used for the stated purposes□

processed and deleted immediately as soon as processing ceases□

is required. In addition, appropriate technical and□

organizational measures have been taken to protect license plate data.□

3. The complainant then replied - according to the parties to the results of the investigation – in his statement of January 2, 2018 (ha. arrived on January 4, 2019) summarized that the complaint against the collection and Processing of identifiers for purposes other than warranty the greatest possible security. The is not required for security purposes Ongoing processing of license plate data including their comparison when entering and leaving exits. This only serves the implementation of the Respondent introduced tariff system. Even if you as a garage user with a One still has to reckon with video surveillance for security purposes Not for a long time with a collection and processing of the indicator for the purpose Calculate tariff conversion. The collection and processing of identifiers for the purpose of Tariff implementation is not a generally accepted standard. In addition, it is obvious that there was a violation of the prohibition on coupling.

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 the right to secrecy by entering the entrance to their Parking garage automatically records the number plate of the complainant's car and subsequently used for the purpose of processing the contract for the use of the garage.

C. Findings of Facts

1. The H*** Garagengesellschaft GmbH & Co KG wraps on behalf of Respondent stopped the garage operation in the "N *** shopping center".
2. At the entrance to the parking garage of the respondent, before passing the Entry barriers by a camera automates the registration of cars recorded. Because of the perspective of the camera, it doesn't happen that the Windshield of the respective vehicle is covered by the recording area. Recorded

is only the lower area of the vehicle at the height of the license plate. About it□

In addition, the date and time of entry and exit is recorded.□

3. Through this process, garage users can use the license plate as a parking medium□

use, which is used for identification when entering and exiting. the barriers□

thus opens automatically without any other parking medium, such as a□

Parking card, must be presented. The process also allows for control of the□

contractual use of the garage, in particular ensuring that the free□

parking period is not exceeded. In addition, through the process□

possible car theft can be prevented by the exit barriers then not□

opens when the ticket number of the vehicle is assigned to the exit at the exit□

License plate does not match.□

4. The information collected is generally deleted within one day.□

Occasionally, however, the information may be stored for a longer period of time, such as□

for example in the prosecution of legal violations.□

Evidence assessment: The findings made are based on the statement□

Respondent of December 20, 2018, which from the complainant in this respect□

were not disputed.□

5. The complainant used at an unspecified time in the year□

2018 the parking garage of the respondent. Collected as part of this use□

Information from the complainant, namely the registration number of his car as well as□

The date and time of use were only used to process the□

license agreement and not otherwise used.□

6. Above the pillar issuing entry tickets at the barrier was□

at least at this time a standing sign, on which the following information, among other things, is given□

was shown (formatting not reproduced 1:1):□

“For your security, the garage is under video surveillance and all entrances and exits are monitored□

controlled by means of electronic license plate recognition!".

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

complainant of October 22, 2018 and on his further statement of

10 November 2018. Although the complainant does not expressly submit that

recorded the number plate of his car and subsequently for the purpose of processing the

User contract was used, this determination results from the fact that the

complainant a photo (close-up) of the pillar issuing entry tickets

and the information sign above it. Thus is of it

to assume that the complainant used the parking garage of the respondent

used at least once. The determination that the information collected

Complainant in the specific case only for the purpose of processing the contract of use

were used, arises from the fact that the complainant to no

time has claimed the opposite and also no corresponding indications

available for this.

D. In legal terms it follows that:

1. Respondent's role in data protection law

In the present case, the applicant submitted that the H***

Garagengesellschaft GmbH & Co KG operates the garage of the "N*** Shopping Center". In

However, later it turned out that the H*** Garagengesellschaft GmbH & Co

KG the garage (and thus also the processing that is necessarily associated with it

personal data, in particular the garage user) on behalf of

Respondent operates and therefore as a processor according to Art. 4 Z 8 DSGVO

is to qualify.

Against this background, the complaint procedure was in succession against the

Respondent as the person responsible for data protection according to Art. 4 Z 7 DSGVO

to lead to which the behavior of the processor is attributed.

2. On the relationship between the right to confidentiality and the GDPR

It should be noted that in the present case a violation of the right to

Confidentiality according to § 1 Para. 1 DSG is to be checked and restrictions of this

Claim from Para. 2 leg. cit., but not from Art. 6 Para. 1 (or Art. 9 Para. 2

DSGVO) result. The GDPR and in particular the principles anchored in it

are to be taken into account in any case when interpreting the right to secrecy

(cf. the decision of the DSB of October 31, 2018, GZ DSB-D123.076/0003-DSB/2018).

3. Regarding confidentiality interests worthy of protection

A violation of the right to secrecy is fundamental according to § 1 Para. 1 DSG

requires that there is a legitimate interest in the confidentiality of personal data

Data exists, with such an interest being excluded if data as a result of their

general availability or because of their lack of traceability to the

Those affected are not accessible to a non-disclosure claim.

A (car) license plate is, according to Section 49 (1) KFG 1967, a

public document, which according to para. 6 leg. cit. fully visible on the vehicle

must be attached. However, in the present case, not from one

generally available date:

Unless such public data is merely reproduced, but a new element

is linked to this data - such as the concrete linking of the

License plate with the time and date when the complainant entered the

Respondent's parking garage is in - and out - it is at

this link to a new use (or in the terminology of the GDPR:

Processing according to Art. 4 Z 2) of data. Such a connection always requires one

Permission (cf. the decision of the DSB of April 23, 2019, GZ DSB-

D123.626/0006-DSB/2018 with further references).

4. To limit the right to secrecy

According to Section 1 (2) DSG, restrictions on the right to secrecy are only permissible

if the use of personal data is in the vital interest of the

Affected or with his consent, in the case of predominantly legitimate

Interests of another or in the presence of a qualified legal

Basis.

In the present case there are undoubtedly no vital interests of the

complainant.

The Respondent also did not rely on consent (or in the

Terminology of the GDPR: Consent according to Art. 4 Z 11) as a legal basis

appealed, therefore, to the complainant's argument that a violation of

the requirements for such consent postulated in Art. 7 GDPR must be met

could not be entered.

The Respondent relied on the legal basis for

However, the processing that is the subject of the procedure is based on legitimate interests pursuant to Art. 6

Para. 1 lit f GDPR, which also justify processing under Section 1 Para. 2 DSG

be able:

5. Weighing of Interests

It then has an assessment of the legitimate interests of the

Complainant to take place and are these the legitimate interests of

confront the respondent and third parties. As part of this

Balancing interests is to take into account that two cumulative conditions

must be given so that the Respondent can rely on this

Permission facts can support:

On the one hand, the processing must be carried out to protect the legitimate interests of the

controller or a third party may be required, on the other hand, fundamental rights

and fundamental freedoms of the data subject, the protection of personal data

require, do not outweigh (cf. on Art. 7 lit. f of Directive 95/46/EC the judgment of
ECJ of 24 November 2011, C-468/10 and C-469/10 [ASNEF and FECEMD] para. 38).

a) Interests of the complainant

In the present case, the complainant generally pointed out that the

Respondent uses the processing in question in order to

to implement changed tariff regulations. He has further confidentiality interests

Complainant not stated.

In the opinion of the data protection authority, it should always be taken into account that

the automated processing of the usage contract, at least in the short term

was stored, at what date and at what time the complainant

used the Respondent's parking garage. However, it was not claimed and

there are also no indications that this information belongs to another

Purpose other than to process the contract of use.

In this context, it should be noted that the Respondent

technical and organizational measures taken to avoid any negative consequences of

exclude processing. The processing in question is limited to

the necessary temporal extent and becomes only the lower area of a vehicle

included at license plate height (cf. Art. 29 Data Protection Group, statement

06/2014 on the concept of legitimate interest for processing

Responsible according to article 7 of the directive 95/46/EG, WP 217, 844/14/EN p. 43,

according to which the implementation of protective measures for a data subject

can contribute to a balancing of interests in favor of the person responsible

fails).

The complainant subsequently submits that the standing sign above the

Column issuing entry tickets, with which, among other things, (partly) about the processing purposes

be informed, can only be read when the license plate recognition already

take place.□

This circumstance is to be taken into account insofar as according to recital 47 first sentence□

DSGVO the reasonable expectations of a data subject with regard to the□

use of their data as part of a weighing of interests as an important factor□

is taken into account (cf. Heberlein in Ehmann/Selmayr, General Data Protection Regulation□

Comment2 [2018] Art. 6 margin no. 28).□

Based on the facts, however, it should be noted that the automated□

License plate recognition for the purpose of processing a usage contract for parking garages,□

although one does not assume any industry standard, at least it is not unusual (cf.□

the decision of the DSB of March 18, 2019, GZ DSB-D196.007/0005-DSB/2019□

which rules of conduct according to Art. 40 Para. 5 DSGVO regarding garage and□

car park operations in Austria have been approved in terms of content).□

a) Interests of the Respondent□

The Respondent, on the other hand, argued that the□

Processing for garage users serve as a parking medium and the barriers of□

open alone, without having to additionally show a parking card and in this respect□

smooth traffic is guaranteed. Furthermore, through the process, a possible□

Car theft can be prevented by not opening the exit barrier when□

the ticket number of the vehicle at the exit with the associated license plate□

does not match, although this can probably only be the case if the free□

Parking time has been exceeded and payment is required at the ticket machine.□

The processing in question therefore primarily serves legitimate interests□

Third parties, such as customers and employees who use the parking garage□

Use respondent (cf. Art. 29 Data Protection Group, WP 217 loc.cit. p. 45,□

according to which the circumstance gives more weight to the interest in question if a□

controller not only acts in the commercial interest, but the processing□

also in the interest of the general public).□

In addition, the processing also serves to automatically process the contract□

for garage use. The Respondent submitted that the processing□

Control of the contractually compliant use of the garage, in particular ensuring that□

the free parking period is not exceeded.□

It should be recognized that this is a quick and efficient method of□

Carry out short-term and long-term use contracts. There are basically alternatives□

conceivable, which with a lesser encroachment on the fundamental right to secrecy□

connected, such as being controlled by a parking attendant, however, these are□

comparatively associated with higher costs and lower efficiency.□

6. Result□

Overall, the data protection authority therefore comes to the conclusion that due to the□

carried out balancing of interests no violation of the right to secrecy□

exists because the legitimate interests of the respondent and third parties (from□

Customers and employees who use the parking garage) compared to those set out□

Impairments of the legitimate interests of the complainant outweigh iSv□

§ 1 paragraph 2 DSG).□

The processing of personal data in question is therefore lawful and□

also necessary to achieve the desired processing purpose.□

It was therefore to be decided accordingly.□