

GZ: 2020-0.517.926 from October 20, 2020 (case number: DSB-D124.2493)□

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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 Manuel A***'s data protection complaint□

(Appellant) of April 29, 2020, amended on May 27, 2020, against the Magistrate of□

City of Wiener Neustadt (respondent) for violation of the right to secrecy□

as follows:□

~ The complaint is dismissed as unfounded.□

Legal bases: §§ 1 paragraphs 1 and 2, 24 paragraphs 1 and 5 of the Data Protection Act (DSG),□

Federal Law Gazette I No. 165/1999 as amended; Art. 4, 5, 6, Art. 51 (1), Art. 57 (1) lit. f and Art. 77 (1).□

of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter: GDPR), OJ.□

No. L 119 of 4.5.2016 p. 1; §§ 1, 12 para. 4, 13 and 48 para. 5 of the Lower Austrian Social Welfare□

Implementation Act (NÖ SAG), LGBl. No. 70/2019 as amended; Wr. Neustadt municipal law 1977,□

LGBl. 1025-0 (WV) as amended; Section 19 of the Lower Austrian City Rights Organization Act (NÖ STROG), LGBl.□

1026-0 as amended.□

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

REASON□

1. With submission of April 29, 2020, improved on May 27, 2020, the complainant made□

alleged a violation of the right to secrecy and essentially justified this□

with the fact that the City Council of Wiener Neustadt, Division ***, Group *** him□

thereby violated his right that within the framework of the social assistance granted to him□

Satisfaction of the housing requirement Payment of remuneration directly to the responsible landlord□

had taken place, as a result of which the complainant was forcibly "outed" as a recipient of social assistance□

been and experienced stigmatization.□

2. With the settlement of May 28, 2020, the data protection authority requested the respondent□

for comment.□

3. With a submission dated June 26, 2020, the Respondent commented on this and led□

summarized from that the complainant due to his related□

(Extension) application with notification of April 9, 2020 Assistance according to the Lower Austria SAG□

(beginning April 1, 2020) had been granted. According to § 12 paragraph 4 leg. cit. be□

To grant social assistance benefits primarily as benefits in kind, in particular□

Benefits to satisfy the housing needs are according to the specifications of Lower Austria□

state government directly by paying the rent to the landlord.□

4. With the date of July 10, 2020, the data protection authority granted the complainant□

Hearing of parties and the right to comment.□

5. By submission of July 30, 2020, the complainant essentially kept his reimbursed□

arguments and added that he was of the opinion that benefits□

primarily, however, are not to be explicitly granted as benefits in kind.□

B. Subject of Complaint□

Based on the submissions of the complainant, it is clear that the subject of the complaint□

the question is whether the Respondent thereby entitled the Complainant to□

has violated secrecy by directly making payments to cover the□

Has paid or is paying housing costs to the landlord and thus information of the□

complainant (i.e. the fact of receiving social assistance) to third parties.□

C. Findings of Facts□

The respondent is the Magistrate of the City of Wiener Neustadt.□

With a decision dated April 9, 2020, the complainant was, starting April 1, 2020□

Social assistance benefits from public funds to meet housing needs□

granted.□

The applicant lives in a rented apartment.□

As part of the social benefit granted to the complainant, the□

Respondent to (partially) cover the complainant's housing costs□

Monthly payments (currently €366.94) directly to their landlord via□

Payment order made to the corresponding contract account.□

Evidence: The findings are based on the□

insofar□

concurring arguments of the parties, than that in particular the arguments of□

Complainant's payments would be made directly to the complainant's landlord□

done by the Respondent as part of his statement of June 26, 2020□

have been confirmed.□

D. In legal terms it follows that:□

D.1. To impute the alleged violation of the right to secrecy□

First of all, it should be noted that the complainant was the magistrate of the city of Wiener□

Neustadt as responsible for the alleged data breach.□

For social assistance benefits according to the Lower Austrian SAG, according to § 39 para. 1 leg. cit the□

district administrative authority□

thorough□

responsible. the□

state government□

and□

the□

District administration authorities are jointly responsible under data protection law (cf.□

§ 48 para. 1 Lower Austria SAG).□

As the organ of the city of Wiener Neustadt, the magistrate takes care of the city's business□

official tasks of its own sphere of activity and is the auxiliary body of the mayor□

in the affairs of the district administration (§ 19 Z 4 and § 47 Abs. 1 NÖ STROG).□

Against this background, the Respondent is subject to data protection law□

to qualify responsible.□

D.2. For the alleged infringement□

1. § 1 para. 1 DSG stipulates that everyone, in particular with regard to respect□

of his private and family life, right to secrecy of those concerning him□

personal data, insofar as there is a legitimate interest in it. That□

Existence of such an interest is excluded if data as a result of their general□

availability or due to their lack of traceability to the person concerned□

secrecy claim are not accessible.□

According to Art. 4 Z 1 GDPR, "personal data" is all information relating to□

relate to an identified or identifiable natural person ("data subject"); as□

identifiable is a natural person who directly or indirectly, in particular□

by association with an identifier such as a name, an identification number□

Location data, an online identifier or one or more special□

characteristics expressing the physical, physiological, genetic, psychological,□

economic, cultural or social identity of this natural person□

can be. According to the case law of the European Court of Justice (ECJ), the□

The term personal data should be interpreted broadly and also includes information□

about the person in question. This condition is met if the information□

because of their content, purpose or impact with a specific person□

is linked (cf. ECJ 20.12.2017, C-434/16, paragraph 34 f.).□

As stated, the Respondent – on the basis of the Complainant□

social benefits granted to meet housing needs – ongoing remuneration payments□

directly to the complainant's landlord (via payment order to the
corresponding contract account).

Against the background that the payments made directly to the landlord
actual housing costs of the complainant or the relevant contract account
are attributed and thus transmitted as part of the payment order

Information is in any case linked to the complainant or assigned to him
must be assumed in the present case that the complainant
is clearly identifiable within the meaning of the GDPR.

In addition, through the direct linkable with the complainant
payment of the Respondent to the Landlord disclosed to the Landlord the fact that
that the complainant received social assistance benefits (i.e. benefits to satisfy
of housing needs)

relates. On

this

information

is

a

worthy of protection

Interest in secrecy in any case to be affirmed, since this is private information
which is not generally available.

2. According to Section 1 (2) DSG, restrictions on the right to secrecy are only permissible if
if the use of personal data is in the vital interest of the

Affected or with his consent, in the case of overriding legitimate interests
another or in the presence of a qualified legal basis.

In the present case, the receipt of social assistance was not disclosed in the
vital interest and there is no doubt that there is no consent in this regard.

However, the Respondent is responsible for the public sector□

qualify, which according to § 1 para. 2 DSG the restriction of the secrecy claim□

of the complainant is to be examined on the basis of a qualified legal basis:□

According to § 12 Para. 4 NÖ SAG, social assistance benefits are primarily granted as benefits in kind□

grant, insofar as a higher efficiency of the fulfillment of the performance goals can be expected□

is. Benefits for housing needs are provided unless this is uneconomical or inexpedient□

is to be granted in kind. A direct payment is also considered a payment in kind□

Payment of remuneration to a person who receives a benefit in kind for the benefit of a beneficiary□

he brings.□

According to § 13 NÖ SAG, benefits to satisfy the housing requirement include the for the□

warranty□

one□

appropriate housing situation□

required□

regularly□

recurring expenses for rent, household goods, heating and electricity as well as other general ones□

operating costs and taxes.□

In the present case - as stated - the complainant by decision of□

April 9, 2020 as part of social assistance benefits to meet housing needs□

granted. The execution of the said decision takes place in the form of benefits in kind□

(starting April 1, 2020 monthly) a direct payment (currently in the amount of□

€366.94 via money order) to cover the complainant's housing costs□

its landlord.□

Already in the explanatory remarks to § 12 paragraph 4 NÖ SAG (cf. IA to line 690/A-1/50-□

2019) it is explicitly stated that benefits in kind are all benefits through which the□

Beneficiaries receive neither directly nor indirectly money, which is why the□

direct payment to a third party – e.g. to cover housing costs□

landlord or the energy costs to the utility company – is considered a contribution in kind.□

Thus, the complainant's landlord is undoubtedly a person who□

provides a benefit in kind for the benefit of a beneficiary,□

by giving dem□

Complainant was permitted to use an apartment (for a fee), and the□

Benefit in kind in the form of a direct payment to this undoubtedly on the□

Basis of § 12 Abs. 4 NÖ SAG. Any other improper processing□

personal data as the direct payment to the landlord by the□

Respondent for the purpose of executing the decision of April 9, 2020 in the sense of the above□

determination is not evident.□

Contrary to the complainant's argument, according to which services only have priority□

but are not to be granted exclusively as benefits in kind are benefits for the□

Housing needs according to the requirements of § 12 paragraph 4, second and third sentence, Lower Austria SAG only□

then not in the form of benefits in kind - i.e. in the form of direct payment of remuneration□

that person who provides a benefit in kind for the benefit of a beneficiary - to□

grant if this is uneconomical or inexpedient. on the part of the complainant□

however, no claim was made that there was inefficiency or□

inappropriateness of direct payment to his landlord would have resulted.□

In addition, § 48 NÖ SAG (excerpts) standardizes the following (emphasis added□

the data protection authority):□

"(1) The state government and the district administrative authorities are as data protection law□

Authorized jointly responsible for the purpose of examining the need for assistance□

seekers, the granting, refusal, reduction and discontinuation of social assistance benefits and the□

Execution of the reimbursement of costs□

especially the ones mentioned□

to automatically process personal data types together:□

the following stakeholders□

1. the person seeking help and the person receiving the benefit: identification data, gender,□

Civil status, health data, citizenship, immigration status,□

nationality□

Linguistic proficiency,□

Integration obligations, professional qualification measures, criminal convictions,□

Basic military service, civil service, address data, accessibility data, accommodation data, data on□

social security relationships, data□

circumstances□

Bank details, family data and performance data,□

the economic one□

and place of birth□

bodily□

Parents,□

the□

to□

opposite to□

the help□

benefit recipient□

2nd of□

Maintenance debtors and maintenance beneficiaries as well as others in addition to the help seekers□

or beneficiary dependents: identification data,□

Address data, accessibility data, civil status, data on economic□

Circumstances and information about an existing adult representation,□

searching□

or□

3. from employers of the persons named in Z 1 and Z 2: identification data, address data□

and availability data,□

4. by providers of accommodation or the property management of the persons named in Z 1 and Z 2:□

identification data,□

and□

Bank details.□

availability data□

accommodation data,□

address data,□

(2 to 4) [...]□

(5) The state government and the district administrative authorities may process personal data in□

Within the meaning of paragraphs 1 and 2 for the purpose and on the occasion of the granting and billing of services□

social assistance to persons and state offices who provide services under this Act,□

to transfer."□

§ 48 para. 5 NÖ SAG represents an explicit legal basis, personal data□

for the purpose and on the occasion of the granting and billing of social assistance benefits□

to those persons who provide services according to the NÖ SAG. In which□

As already stated, the complainant's landlord is a person□

iSd § 12 paragraph 4, last sentence, leg. cit., which (to satisfy the housing requirement) a□

Provides a benefit in kind for the benefit of a beneficiary by giving the complainant□

the use of an apartment (for a fee) is permitted. Objective was this from□

Reason for granting social assistance (i.e. in execution of the relevant decision□

dated April 9, 2020) relating to the complainant□

information transmitted.□

The result was the direct payment of remuneration to the landlord or that was made as a result□

Disclosure of the information that the complainant is receiving social assistance, hence by the □

Existence of a qualified legal basis lawful, which is why no violation in □

there is a right to secrecy. □

It was therefore to be decided accordingly. □