

DSB-D122.844/0006-DSB/2018 from 21.6.2018□

[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.□

Ruling reworded according to the decision of the Federal Administrative Court of May 24, 2019,□

GZ: W258 2205602-1/8E.]□

NOTICE□

S P R U C H□

The data protection authority decides on Mr. Alfred's data protection complaint□

A*** (complainant) of January 22, 2018 against N*** Bank AG□

(Respondent) for violation of the right to information as follows:□

1. It is established that the Respondent is the Appellant□

thereby violated his right to information by telling him about his□

Request from 11/28/2017, information about his data, namely□

Transfers to the property management "XXXX" and the property management□

"XXXX" of the past 5 years has not provided any information.□

2. The Respondent is ordered within a period of two□

to provide information in accordance with Art. 15 GDPR in the event of other execution.□

Legal basis: §§ 32 ff of the Payment Services Act 2018 - ZaDiG 2018, Federal Law Gazette I□

No. 17; Sections 24 and 69 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended; Article 5□

Paragraph 1 letter e, Article 15, Article 12 Paragraph 5 letter a, Article 55 Paragraph 1, Article 56 paragraph 1, Article 57 Paragraph□

Article 58(2)(c) and Article 77 of Regulation (EU) 2016/679 (data protection□

Basic Regulation - GDPR), OJ No. L 119 p. 1.□

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

REASON□

1) With a submission dated January 22, 2018, the complainant complained that he□

Respondent needs proof of transfer of the last five years and□

only proof of transfer, which does not date back more than a year,□

could see. The complainant then asked the respondent to□

Transmission of evidence for the other years. However, the Respondent would have□

the provision of proof of transfer is charged at EUR 30 per year.□

The complainant would then have a data protection request for information□

and received no information by the end of the period.□

2) With a request for a statement dated January 29, 2018, GZ: DSB-D122.844/0001-□

DSB/2018, the data protection authority asked the respondent to□

Eliminate the infringement and provide information directly to the complainant□

to issue or, if necessary, to comment. The Respondent took part□

Entry dated February 10, 2018 that duplicate account statements not using□

e**Banking could be queried electronically, according to the notice with EUR 30.00□

would be charged.□

3) The data protection authority cleared the respondent with the completion of□

February 23, 2018, GZ: DSB-D122.844/0002-DSB/2018, right to be heard. the□

Complainant commented on March 14, 2018 and led□

summarized from the fact that data protection information is fundamentally free of charge□

would be granted and according to the case law of the data protection authority only□

actually incurred costs for replacement could be prescribed. in the□

In the present case, it is not clear how the prescribed costs came about□

and he requested that the costs be assessed accordingly and that□

instruct the Respondent to comply with the request for information.□

4) With a further request for comment dated April 18, 2018,□

GZ: DSB-D122.844/0003-DSB/2018, the data protection authority informed that□

Compensation for costs can only be prescribed for costs actually incurred and□

that the Respondent may explain how the costs demanded□

would put together.□

5) In a submission dated April 30, 2018, the Respondent stated that she already□

the obligation of the ZaDiG to provide the complainant with information free of charge□

would have granted and on the basis of this special statutory provision to the complainant□

no further free information is entitled. In this regard, the□

Data Protection Authority in its case law the existence of harassment in the event that□

where the data could still be viewed electronically using e**banking. Further□

did the OGH in 6 Ob 25/90 harassment with regard to those data that were already before the□

requests for information would have been communicated in bank statements, affirmed. Furthermore□

see the ZaDiG, in the implementation of the Payment Services Directive as equal to the Data Protection Directive,□

provides that fees are linked to the repeated provision of information□

could become. In any case, the fee is reasonable. The Respondent□

also referred to the provisions of Article 12(5) in force after May 25, 2018□

lit. a and b GDPR, according to which a fee can be demanded. Also could dem□

Union legislators are not assumed that the provisions of Art. 40 ff□

RL 2015/2366 would have to remain without scope and this would be the case if it□

the Respondent would not be granted a reasonable fee□

charge. Also, not all payment transaction data are without further effort□

accessible. It would bind the information essential human resources and be the□

Information where the Respondent is dependent on third-party service providers□

monetary expenses associated. In the present case would be□

Respondent incurred costs of EUR 9.92 for 2013.□

6) The data protection authority granted the complainant on May 3rd□

2018, GZ: DSB-D122.844/0005-DSB/2018, legal hearing again. A substantive

The complainant's comments were not received.

B. Subject of Complaint

The subject of the complaint is the question of whether the Respondent

thereby violated the right to information by responding to the request for information from

November 28, 2018 has not ruled, as well as the question of whether the right of access

Duplicate extracts can also be requested.

C. Findings of Facts

The complainant sent a request for information on November 28, 2017 to the

Respondent and requested information about own data, especially about

Transfers from the years back to 2013. The Respondent has none

provides information under data protection law and ties information to costs of EUR 30.00

per year. For the year 2013, the Respondent incurs costs amounting to

EUR 9.92.

Evidence Evidence: Evidence was through the submissions of the parties

recorded. The preservation of the matter is undisputed insofar as the parties

consistently described the facts and clarified the relevant facts

The question lies solely in the legal assessment.

D. In legal terms it follows that:

1. General:

According to the legal situation applicable from May 25, 2018, this was previously according to § 31

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 (cf

Section 69 (4) DSG).

The applicability of the DSG in the current version and the GDPR must be stated,

that according to § 69 DSG there is no statutory transition period and therefore

the legal situation at the time of the official decision is decisive. it's coming □

namely, in the present case it does not depend on what happened on a specific date or in a □

specific period was legal, since both the DSG 2000 and the DSG it a □

Respondents concede, until the end of the official procedure, the information □

to catch up (cf. from the stRsp of the VwGH the decision of February 28, 2018, □

Zl. Fe 2016/06/0001 with further references). Thus, the complainant's request at the time, □

which was based on the then applicable legal situation of § 26 DSG 2000, after which □

to assess the now applicable right to information under Art. 15 GDPR and the □

compared to ZaDiG 2018. □

2. To justify the complaint: □

The complaint is justified because the respondent is undisputed □

to the data protection request for information not in accordance with the DSG or the □

GDPR has reacted in the manner provided for. Already the non-reaction to a □

A request for information constitutes a violation of the right to information (cf □

Decision of the Data Protection Commission of April 10, 2013, GZ K121.924/0006- □

DSK/2013), which is why the complaint had to be upheld. □

The complainant also claims that the respondent had him in □

Right to information violated by (incomprehensible) costs to the □

Information about certain account statements and led to the case law of □

Data Protection Commission on GZ: K121.394, according to which the right to information □

is to be granted free of charge and only costs actually incurred are prescribed □

could become. □

The quoted case law of the data protection commission refers to the legal situation □

before the GDPR came into force and relates to the content of the rules that are in the current □

Can't find legal position. □

Applied to the current case, the following must therefore be carried out: □

2.1. Regarding the request for information in relation to information obligations:□

As data protection information, the complainant requests the (free)□

Provision of information held by the Respondent. the□

Respondent charges for the objective answer to the information,□

does not dispute the existence of a data protection request for information.□

The Respondent believes its obligations under the ZaDiG 2018□

to have complied, and therefore assumes that the requirements of Art. 12□

Paragraph 5 lit. a and b GDPR are present and the complainant abused his right□

practice□

It should be pointed out that Art. 15 GDPR does not correspond to Section 26 (6) DSG 2000□

identical regulation, according to which the data protection request for information□

can only be exercised as a subsidiary to other rights of inspection. Rather, there is□

fundamental right to information according to Art. 15 DSGVO, insofar as no permissible one□

Restriction according to Art. 23 DSGVO exists.□

If, on the other hand, a more specific substantive regulation applies under Union law, then this applies□

according to the principle *lex specialis derogat legis generalis*. The GDPR cannot□

be interpreted in such a way as to finally regulate the rights of those affected.□

Rather, the GDPR, in accordance with its scope of application, regulates the□

Data subject rights in a general way, although it is not excluded that in□

other legal acts of the Union, more specific regulations on the rights of data subjects□

are provided (cf. e.g. Art. 12 et seq. of Directive (EU) 2016/680; Art. 41 of□

Regulation (EC) No. 1987/2006 or Art. 37 of Regulation (EC) No. 767/2008).□

Since in the present case the ZaDiG 2018 (which implements the Directive (EU)□

2015/2366 was issued) no special right to information standardized, can also□

the right to general data protection information about your own data□

be restricted. On the contrary, the said directive refers to the directive□

95/46/EG (Privacy Policy), which governs the processing of personal data□

is decisive (Recital 89, Art. 95 of Directive (EU) 2015/2366). Pursuant to Art. 94 para. 2□

GDPR, references to the Data Protection Directive shall be deemed to be references to the GDPR.□

2.2. Regarding the scope of the data protection information:□

In his request for information, the complainant requests the provision of□

"Account statements" for the period 2013 - 2018:□

"A data subject should have a right of access to data concerning them□

personal data that has been collected and have this right□

be able to perceive easily and at reasonable intervals in order to become aware of the□

to be aware of the processing and to be able to verify its legality [...]"□

(Recital 63 GDPR)□

The complainant is entitled to a free copy of the to be checked□

obtain personal data, with the right to obtain a copy of the□

may not impair the rights and freedoms of other persons (Art. 15 para. 3 and 4□

GDPR).□

The complainant can assert the right to information about the him□

to check the data processing in question. Since payment receipts are usually far□

more than personal data of the data subject, in this case the□

complainant, can include the right to information under data protection law only□

go so far as that it is for the purpose of verifying the legality of□

Data processing corresponds (cf. the judgment of the ECJ of July 17, 2014 in the□

joined cases C-141/12 and C-372/12).□

The Respondent therefore has the complainant concerning□

personal data following the request for information, taking into account the□

Restriction of Art. 15 Para. 4 GDPR.□

Also the contingency argument that the complainant proceeded in a vexatious way and the□

Respondent legitimately makes use of its right under Article 12(5)(a).□

GDPR by prescribing costs in the event of excessive requests for information,□

cannot be followed.□

In its statement, the Respondent refers to a general point□

Ban on harassment and explains that the OGH had approved such a thing and that with□

Art. 12 (5) lit. a and b GDPR also counteracted vexatious exercise of rights□

shall be.□

First of all, it must be stated that the Austrian case law requires the existence of a□

"General ban on harassment" denied and only an exercise of rights, which□

violates good morals in Section 1295 (2) ABGB, is frowned upon (cf□

2 Ob 576/55, 3 Ob 520/51 and others, see also OGH in the decision of July 10th□

1986, 6 Ob 12/85 = SZ 59/123 = RdW 1986, 306 = JBI 1986, 643).□

But what a special claim of the□

Respondent (of the person responsible) in accordance with Article 12 (5) lit. a and b GDPR□

concerned, it is granted that in the event of manifestly unfounded or□

excessive exercise of rights, a right to have costs imposed or a□

"Right of Refusal" would apply.□

The legislature is bad at it. "particularly in the case of frequent repetition" thereof□

that there must be a certain intensity that the person responsible must be able to□

would make unreasonable against the fundamentally unfounded subjective right of control□

to have to accept (heads in Gantschacher/Jelinek/Schmidl/Spanberger,□

Commentary on the General Data Protection Regulation¹ 2017, on Art. 12; see also the□

Decision of the DSK from September 14th, 2012, GZ K121.830/0008-DSK/2012).□

The complainant exercises the right to information for the first time against the□

Respondent and asks for very specific data. Here will too□

takes into account that the complainant only requests information about data that he□

himself can no longer see the e**banking and therefore the participation of□

Respondent is required.□

The complainant therefore has no behavior when exercising his right to information□

set, which would make it unreasonable for the Respondent to do without□

to take action to prescribe costs, or to refuse to provide information.□

It was therefore to be decided accordingly.□