

GZ: DSB-D123.591/0003-DSB/2019 from April 12, 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. Ludwig□

A*** (complainant) of October 9, 2018 against the Federal Ministry of the Interior□

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

1. The complaint is partially upheld and it is found that the□

Respondent the complainant through the publication of subsequent□

Text passages on the Respondent's website in his right□

violated secrecy:□

"Coffee house appointments: BMI publishes chronology of A*** requests since 25.□

September□

A*** wanted an interview and introductory talks, confronted the Ministry of the Interior□

but not with concrete allegations. The Federal Ministry of the Interior will deal with the press council.□

On October 2, 2018, the Federal Ministry of the Interior held a□

Press release (OTS****) on a current report in B***-Magazine states that□

no contact with the BMI and in particular with Secretary General Richard□

T*** by B*** magazine editor-in-chief Ludwig A*** took place. A***□

now justified himself via Twitter with a screenshot of a general□

Interview request and the claim that he was also with the KC (head of cabinet) and□

requested from the spokesman.□

In fact, no one in the BMI was faced with the specific reservations as it
would be provided for in the “Code of Honor for the Austrian Press”. Only one came out
general interview request, specific questions about other issues as well as
Invitations to coffee house talks.

For the complete information of all media, the BMI creates a chronology of the

Contacts made by A*** in the course of his research on the current reports

before:

[...]

Due to a lack of responsibility, the head of the communications department forwarded this email to the

personal press spokesman for Minister of the Interior Kickl and informed A *** on

September 26 at 08:25 above. With the personal press spokesman of the

As a result, Ministers did not receive any inquiries from A***s. In the absence of one found

No interview was offered at the time.

At 2:30 p.m. on September 26, the head of the communications department received

again from A***s private address - the following in response to the notification

Mail written via the forwarding (error in the original):

Dear Mr H***,

I would like to ask you for information on the following questions in order to research the BMI:

How many advertisements does the BMI and the BMI subordinate offices have in the

Term of office of Herbert Kickl switched and in which media (please provide exact

Breakdown).

How much tax money was spent on these ads?

How many media collaborations have there been?

I would also like to know how many people in the press department, the department for

Communication and social media agendas are active and what budgetary means

for the social media presence of the Federal Minister. how did

has the number of employees in the press department changed?□

I ask you to provide the information by Friday 1 p.m.□

Sincerely□

Your Ludwig A***□

All of these questions were answered in a timely manner and extensively, including a tabular overview□

answered, there was also written information on a specific request from A***s. In□

the whole, with the Deputy Press Spokesperson of the Minister of the Interior□

conducted, correspondence mentioned A*** which is now to Secretary General T***□

allegations made regarding the gathering of information on the subject□

Fraternities not once.□

The last message A***s received so far was on September 30th at 7:36 am.□

A*** asked for the transmission of the social media communication strategy. This□

Mail was marked as an "application according to the information obligation law" and is still□

In Progress.□

On September 25, A*** called the department spokesman of the BMI and offered to□

"explain the press work in Austria" to him and for this purpose "private" him□

Wanting to meet Viennese Café U***. The department spokesman says the originally ins□

scheduled appointment on September 26 at 7.12 p.m. with the following SMS:□

Dear Dr. A***,□

unfortunately I have to cancel our breakfast tomorrow due to scheduling reasons. This□

but we can make up for it when we return from vacation. I'll get in touch□

the week after next regarding a new date.□

Best regards Martin V***□

On September 27th, the head of the cabinet also received a call from A***s□

Ministry of the Interior, who was, however, in a meeting. This was followed by this SMS□

Correspondence:□

D***: Please text – can't speak right now – thank you LG Oskar D***

A***: Sg. Herr Mag. D***, I'm writing a cover story about Herbert Kickl and his

Cabinet and would like to go for coffee with you. Do they have time? With

kind regards Ludwig A***

D***: Dear Mr. A***! Please contact the

Cabinet press staff. If you still have questions after that, let us know

you are welcome to visit me again. Kind regards, Oskar D***

A***: I actually wanted to get to know you and start a conversation

BMI notes that all contacts made by the B*** magazine editor-in-chief,

based on the now published allegations against the BMI Secretary General, not

the "Accuracy" chapter in the "Code of Honor for the Austrian Press"

comply with established guidelines, which are as follows:

2.3. Accusations may not be raised without being proven

at least an attempt has been made to obtain a statement from the accused person(s)

or institution(s). Is it playing a public

allegation made, this must be clearly indicated."

2. The complaint is otherwise dismissed with regard to the following text passage:

"At 5:42 p.m. on September 25, Ludwig addressed A*** from his private address

the following email to the head of the communications department in the BMI:

Dear Mr H***,

I would like to have an authorized interview with Herbert Kickl for the upcoming

issue of the B*** magazine. I think that would be an exciting and

clarifying conversation. Is that possible?

Kind regards

Ludwig A***"

3. The complainant's application for the issuance of an administrative decision

rejected.□

Legal bases: §§ 1 paragraph 1 and paragraph 2, 22 paragraph 4, 24 paragraph 1 and paragraph 5 and 25 paragraph 1□

the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended; Art. 4 Z 1-2, Art. 6 Para. 1 lit.□

f and Art. 9 of Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR),□

OJ No L 199, 4.5.2016, p.1; Section 2 and Part 1 Z 10 of the Annex to Section 2 of the□

Federal Ministry Act 1986 – BMG, Federal Law Gazette No. 76/1986 as amended; § 9 of□

Media Act – MedienG, Federal Law Gazette No. 314/1981 as amended; § 57 paragraph 1 of the general□

Administrative Procedures Act 1991 – AVG, Federal Law Gazette No. 51/1991 as amended.□

REASON□

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

1. In his submission of October 9, 2018, the complainant brought along an improved version□

October 11, 2018, to the Data Protection Authority in substance, of□

The Respondent has the Complainant's correspondence on its website□

published in full with employees of the respondent. through the□

Publication of the text of his e-mails and his SMS, as well as by the□

Publication of the fact that the communication took place is the□

Complainant's right to secrecy and erasure has been violated□

and the Respondent also violated his information obligations.□

For this reason, the complainant also applied for a procedure according to § 25 para.□

1 DSG.□

2. The DPA dismissed the complainant's complaint with regard to□

a violation of the right to erasure with October 22, 2018, since the□

Complainant had not submitted a request for deletion to the Respondent.□

Regarding the alleged violation of the right to secrecy and a□

The respondent was asked to comment on the violation of information obligations□

asked.□

3. The Respondent replied with a statement dated December 3, 2018□

summarized, the complainant had already before the publication of the□

Correspondence by the Respondent himself a message on Twitter□

published, from which the personal data of the complainant,□

specifically the e-mail address and name of the complainant, as well as the name of the□

be apparent to the recipient. This is not an interest worthy of protection□

complainant on secrecy. It is the complainant□

also a representative of a medium and is also the circumstance of□

Contact published by the complainant in a newspaper article□

been. Even if the complaint was fundamentally justified, the□

Processing based on the performance of a task carried out in the public interest□

lies, namely the trust of the population in the Federal Ministry of the Interior□

to be maintained, has taken place and the corresponding legal basis can be found in□

BMG. At best, § 9 MedienG is also relevant, which also gives authorities the right to□

grant counter-notice. The Respondent also does not violate the□

Principle of good faith or purpose limitation, having the data in the same□

way, as the complainant used, namely to contested circumstances□

to prove. There is also no violation of data minimization, since a□

Publication in full text due to the same by the complainant in full text□

published message was necessary for the same credibility value□

to achieve. Furthermore, there was no violation of the information obligations,□

because the necessary information is on the website of the Federal Ministry of the Interior□

are evident.□

4. With the hearing of the parties on December 13, 2018, the data protection authority declared that□

Complaint about a violation of the duty to inform by the reaction of the□

Respondent to be considered irrelevant and the procedure according to § 24□

Para. 6 DSG to be discontinued if the complainant does not respond within a period of
two weeks as to why he originally claimed that the law had been violated
at least partially still consider as not eliminated. Despite appropriate
The complainant was not asked to make any further submissions in this regard
reimbursed.

4. The complainant has, within the framework of the party hearing granted to him
December 27, 2018 to the Respondent's statement only with regard to
expressed and essentially alleged a violation of the right to secrecy,
he did not have the confidential communication published by the Respondent
self-published and are also not the requirements of § 1 para. 1 sentence 2 DSG
given. In addition, neither the BMG is a suitable legal basis for the
publication of his data, Art. 6 Para. 1 lit. f DSGVO for
authorities applicable. The complainant further submitted that the
The communication that is the subject of the proceedings is sensitive data, since its
political opinion is recognizable and have the data protection declaration of the
Furthermore, the Respondent's actions also do not affect the Respondent's actions
met.

B. Subject of Complaint

Based on the submissions of the appellant, it follows that
The subject of the complaint is whether the respondent by publication
of the procedural text passages on the website against the fundamental right
violated the complainant's confidentiality.

C. Findings of Facts

Based on a published newspaper article, the Respondent criticized that
the appellant did not pay sufficient attention to one during his research
tried to comment.

The complainant then published on October 2, 2019 at 8:08 a.m.□

Twitter the following message including a screenshot of an email:□

[Here in the original of the notification text as a facsimile (screenshot, graphic file)□

Twitter message reproduced cannot be pseudonymised with reasonable effort□

will. It has the following content:□

"BMI now claims I didn't request an interview. That's wrong. inquiry□

also at KC and press spokesman□

[Link to APA-OTS message]□

[Quote from an email to BMI employee H***]□

Subject: Interview request□

Dear Mr H***,□

I would like to have an authorized interview with Herbert Kickl for the upcoming□

issue of the B*** magazine. I think that would be an [end screenshot]]"□

The text of the email published by the complainant is (formatting not 1:1□

reproduced):□

"Dear Mr. H***, I would like to have an authorized interview with Herbert Kickl for□

lead the upcoming issue of the B***-Magazine. I think that would be an exciting one□

and clarifying conversation. Is that possible? Kind regards, Ludwig A***"□

Evidence assessment: The findings made are based on the submissions of the□

Respondent as well as official research (query on Twitter) by□

Data protection authority, from which the attached screenshot also results.□

The Respondent then published on October 2, 2018 at 7:18 p.m.□

the following text passages on his website and linked them via Twitter (formatting□

not reproduced 1:1):□

"Coffee house appointments: BMI publishes chronology of A*** requests since 25.□

September□

A*** wanted an interview and introductory talks, confronted the Ministry of the Interior□

but not with concrete allegations. The Federal Ministry of the Interior will deal with the press council.□

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general interview request, specific questions about other issues as well as□

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Conversation. Is that possible?□

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Communication and social media agendas are active and what budgetary means

for the social media presence of the Federal Minister. how did

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the whole, with the Deputy Press Spokesperson of the Minister of the Interior

conducted, correspondence mentioned A*** which is now to Secretary General T***

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the "Accuracy" chapter in the "Code of Honor for the Austrian Press"□

comply with established guidelines, which are as follows:□

2.3. Accusations may not be raised without being proven□

at least an attempt has been made to obtain a statement from the accused person(s)□

or institution(s). Is it playing a public□

allegation made, this must be clearly indicated."□

The complainant did not agree to this publication.□

The text passages have since been removed from the Respondent's website□

turned off.□

Evidence assessment: The statements made are based on that□

concurring arguments of the parties.□

D. In legal terms it follows that:□

D.1. Procedural legal bases:□

The constitutional provision of § 1 Para. 1 and 2 DSG reads including the heading□

(emphasis added by the data protection authority):□

fundamental right to data protection□

§ 1. (1) Everyone has, in particular with regard to respect for his private and□

family life, right to confidentiality of personal data concerning him□

Data insofar as there is a legitimate interest in it. The existence of such□

Interest is excluded if data due to their general availability or□

because□

one□

secrecy claim are not accessible.□

their lack of traceability□

concerned□

the□

on□

(2) Insofar as the use of personal data is not essential□

interest of the person concerned or with his consent are restrictions of the□

The right to secrecy only to protect overriding legitimate interests□

of another, and in the case of interventions by a state authority only on grounds□

of laws resulting from the in Art. 8 para. 2 of the European Convention for the Protection of□

Human rights and fundamental freedoms (EMRK), Federal Law Gazette No. 210/1958□

are necessary. Such laws prohibit the use of data by their nature□

are particularly worthy of protection, only to protect important public interests□

and must□

the□

Confidentiality interests of those affected□

in the case of permissible□

The encroachment on the fundamental right may only achieve the goal in the mildest of restrictions□

leading kind are made.□

for□

determine. Also□

adequate guarantees□

the protection□

simultaneously□

Art. 4 Z 1 and 2 GDPR reads including the title (emphasis added by the□

Data Protection Authority):□

Article 4□

definitions□

For the purposes of this Regulation, the term means:□

1. "Personal Data" any information relating to an identified or□

identifiable natural person (hereinafter "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 specific

characteristics expressing the physical, physiological, genetic, psychological,

economic, cultural or social identity of this natural person,

can be identified;

2. "Processing" any operation carried out with or without the aid of automated processes

or any such series of operations involving personal data such as that

Collection, recording, organization, ordering, storage, adaptation

or modification, retrieval, use, disclosure by

transmission, distribution or any other form of provision, comparison or

linking, restriction, deletion or destruction;

§ 2 and Part 1 Z 10 of the annex to § 2 BMG read together with the heading (emphasis

by the data protection authority):

Sphere of action of the federal ministries

§ 2. (1) The sphere of action of the federal ministries includes:

1. the shops that

a) are designated in Section 3 and Part 1 of the Appendix,

[...]

1. [...] 9.

Part 1

Appendix to § 2

10. Matters of information about the departmental area including traffic

with the press, radio and television.

§ 9 MedienG reads including the title (emphasis added by the data protection authority):

counter-notification□

§ 9. (1) Any by a statement of fact disseminated in a periodical medium□

has been, not just a generally affected natural or legal person (authority).□

Right to free publication of a counter-statement in this medium,□

unless the counter-notification is untrue or its publication from others□

reasons is excluded.□

(2) Statements of facts that are accessible to a reply are statements that are of their kind□

are accessible after an examination for their correctness and completeness and their□

essential statement not just in a personal expression of opinion, an evaluation□

or a warning about the future behavior of another.□

(3) In the reply, it must be stated in a concise manner that and to what extent the□

statement of facts was incorrect or incomplete and from what this resulted. the□

Replies can be made in any language. You either have to face the facts□

cite which are correct in contrast to the statement of facts or the latter in one□

supplement a significant point, or otherwise refer directly to the factual information and□

their inaccuracy or misleading incompleteness. Your scope may not□

are disproportionate to that of the statement of facts. It must be in the language of□

publication to which it relates.□

D.2. In the matter itself:□

The publication of the correspondence on the Respondent's website, as□

also the corresponding link on Twitter, constitute processing within the meaning of Art□

Art. 4 Z 2 GDPR.□

As the Respondent correctly submits, the name and□

the email address of the complainant, as well as the fact that□

Communication has taken place in order to process personal data within the meaning of Art. 4 Z 1□

GDPR, as this is information relating to an identified or□

identifiable natural person, namely the complainant.□

However, the other, from the Respondent□

published text passages a personal data of the complainant□

represents, since the concept of personal data, according to the judicature of the□

CJEU, not just limited to sensitive or private information, but□

potentially all kinds of information, both objective and subjective□

includes. As a prerequisite for such an extensive interpretation of the□

The ECJ states that personal data is information about the□

person speaking must act. This condition is met if the□

Information because of its content, purpose or impact with a□

is linked to a specific person (cf. ECJ 20.12.2017, C-434/16, margin no. 34 f.). the□

text passages that are the subject of the proceedings are inquiries by the complainant, including□

corresponding detailed explanations and comments by the□

Respondent and these text passages in their entirety are in any case with the□

Complainant inextricably linked. It is therefore also a question here□

personal data according to Art. 4 Z 1 DSGVO.□

Contrary to what the complainant submits, however, these are personal data□

not also to be considered as sensitive data according to Art. 9 DSGVO, since they are□

reasonable assessment no political opinion can be derived.□

With regard to this personal data, there is therefore also a basic principle□

the complainant's interest in secrecy worthy of protection pursuant to Section 1 (1).□

DSG. The existence of such an interest is, however, pursuant to Section 1 (1) sentence 2 leg. cit.□

excluded if the data are already generally available.□

As noted, the complainant posted a passage of text on Twitter, yet□

before the Respondent published them on its website. The publication□

by the complainant as general availability according to § 1 para. 1 leg. cit. to□

values, since Twitter is a platform whose content is widely shared□

group of people are freely accessible and publicly retrievable. The complainant has□

deliberately decided to publish it through his action on Twitter.□

With regard to this passage of text, there is therefore no interest worthy of protection□

complainant to secrecy according to § 1 DSG and was the complaint□

to be dismissed in this regard.□

As a further consequence, it must be checked whether the publication of the additional□

text passages by the respondent was legally compliant.□

As has been established, the complainant has not consented to publication□

and this was not done in his vital interest.□

The respondent as an auxiliary apparatus of a supreme body is□

in any case a "state authority" according to § 1 Para. 2 DSG and the□

Publication also within the framework of the sovereign administration. The perception of□

Public relations tasks are inseparably linked□

to the activities carried out by the authorities and can therefore not be detached from them□

be seen. After all, the purpose of public relations is to□

To inform the general public about the actions of authorities or courts.□

An encroachment on the constitutionally guaranteed fundamental right of the□

Complainant's request for secrecy is therefore only permissible on the basis of the law.□

In this regard, the Respondent relies on Part 1 Z 10 of the Annex to § 2 BMG.□

This is a provision which, although the scope of the□

Federal ministries defined in more detail, but this does not constitute an adequate one□

Permission for an intervention by the respondent in the right of the□

Complainant to secrecy according to § 1 para. 2 DSG.□

In addition, the Respondent relies on Section 9 MedienG, which is set out in Paragraph 1 leg. cit.□

also grants an authority a right to reply. This□

However, a counter-notification must be made in the same medium, which is

Publication of the text passages at issue on the website of the

Federal Ministry is not the case.

In addition, this counter-notification pursuant to paragraph 3 leg. cit. in a concise way

to be carried out and must not be disproportionate to the statement of facts. the

As noted, the complainant posted a short message on Twitter,

whereupon the Respondent the entire correspondence with precise information

the content of all inquiries, date and time, as well as subsequent reactions and

explanations disclosed. This is a "rebuttal".

in any case is disproportionate to the publication of the complainant. this

the Respondent cannot justify that the fully comprehensive

Publication was necessary to gain public confidence in the

Respondent to maintain because, as just explained, § 9 MedienG only one

allows for a brief reply. Publication by the Respondent

therefore does not correspond to the requirements of a counter-notification according to § 9 MedienG.

If the Respondent relies on publication due to legitimate

interests according to Art. 6 Para. 1 lit. f GDPR, he fails to recognize that according to

Paragraph 1 last sentence leg. cit. does not apply to public authorities in the performance of their duties.

As a result, there was no suitable legal basis for the intervention of the

Respondent in the constitutionally guaranteed basic right of

complainant to secrecy and there is therefore a violation of § 1

DSG before.

The present complaint turned out to be correct with regard to the text passages just discussed

entitled and was therefore in accordance with § 24 para. 5 DSG to give partial compliance and the

assertion of violation.

D.3. Regarding the mandate notice:

According to § 22 para. 4 DSG, the data protection authority can, if through the operation of a

Data processing poses a significant, immediate threat to protection

Confidentiality interests of the data subject (imminent danger) exist

Prohibit the continuation of data processing with a decision in accordance with § 57 Para. 1 AVG.

Section 57 (1) of the AVG stipulates that the authority is entitled to impose a

Decision regarding measures that cannot be postponed, even without prior notice

to issue investigative procedures.

As noted, the text passages have since been removed from the website of the

Respondent removed. There is therefore no risk of default. The request of

Appellant was therefore dismissed.