

GZ: DSB-D130.006/0002-DSB/2018 from 2.8.2018□

[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 the complaint of Dr. Karl A\*\*\*□

(complainant) from \*\*\*\* of June 1, 2018 against N\*\*\* Austria Gesellschaft m.b.H.□

in \*\*\*\* (respondent) due to a violation of the right to erasure (Article 17□

GDPR) as follows:□

- The c o m p e n t i n g e d e l i d .□

Legal basis: Section 24 (3) of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999□

idgF; § 13 paragraph 3 of the General Administrative Procedures Act 1991 (AVG), Federal Law Gazette.□

No. 51/1991 as amended.□

REASON□

A. Submissions of the Party and Course of the Procedure□

1. With a submission dated July 1, 2018, the complainant claimed using a□

form provided by the Data Protection Authority for such purposes□

Violation of the right to erasure (Art. 17 GDPR) and essentially brought about this□

reserves the right to delete "N\*\*\*\*" regarding the automatic completion□

his name when searching with the help of the N\*\*\* search engine ("AutomatSupplmt"-□

function) to have exercised. "N\*\*\*\*" rejected his application. The request were□

various parts of an online correspondence with the "N\*\*\*-Team" attached,□

but no copy of the application originally addressed to "N\*\*\*\*".□

2. With the defect rectification order dated June 6, 2018, GZ: DSB-D130.006/0001-DSB/2018,□

the DPA invited the complainant to file his complaint□

to be adequately documented in accordance with the statutory provisions. By doing□

The order to remedy defects was expressly based on the possibility of rejection□

according to § 13 paragraph 3 AVG.□

3. The following points were criticized:□

“Your complaint lodged with the Data Protection Authority on June 4, 2018 proves itself□

as defective and in need of improvement for the following reasons:□

The following element is missing for a legally executed pursuant to Section 24 (3) DSG□

Complaint:□

1. regarding an alleged violation of the right to erasure of data (Art. 17□

GDPR): the underlying request.□

Please remedy this deficiency by improving the complaint again□

add or add.□

A period of two weeks is set for the fulfillment of this order to remedy defects□

receipt of this letter. If there is no improvement, according to § 13□

Paragraph 3 of the General Administrative Procedures Act 1991 (AVG) with the□

Expect rejection of the application."□

4. The complainant replied by letter dated June 7, 2018 and as follows□

submitted: He submitted the corresponding application on the "N\*\*\* support site",□

therefore not in writing, but via a "predefined electronic mask". The content□

but emerges from the content of the correspondence with N\*\*\*.□

5. B. From a legal point of view it follows□

6. B.1 Necessary Elements of a Complaint□

7. Pursuant to Section 24 (3) DSG is the underlying application and any response□

of the respondent, if necessary, to join a complaint. The template□

of the relevant documents proving the exercise of the applicable ☐

serve the right made before lodging a complaint is expressly part of the statutory provisions ☐

required minimum content of a complaint for violation of the right to erasure ☐

own data. ☐

8. According to § 13 para. 3 General Administrative Procedures Act 1991 (AVG, BGBl. ☐

No. 51/1991 as amended.) Deficiencies in written attachments do not authorize the authority to ☐

rejection. Rather, the authority has ex officio immediately ☐

to arrange for the defect to be remedied and the defect to be remedied within a ☐

reasonable period of time with the effect that the attachment after fruitless ☐

Expiry of this period will be rejected. If the defect is remedied in good time, then ☐

the application as originally correctly submitted. ☐

9. B.2 On the merits ☐

10. The complainant, despite the opportunity (in the form of a ☐

defect rectification order) does not eliminate the detected defect. that he ☐

according to his own statements, has neither created nor saved the corresponding document, ☐

is at his expense. The question of whether the right to erasure or "to be forgotten" ☐

according to Art. 17 DSGVO also a right to suppress certain results of the ☐

"AutomatSupplmt" function is new and legally unanswered (for ☐

corresponding case law of the civil courts, based on § 16 ABGB, cf. OGH ☐

March 30, 2016, 6 Ob 26/16s, jusIT 2016/50 S 107 (Thiele), etc.; conceivable would be present ☐

therefore also a violation of the fundamental right to data protection according to § 1 DSG). ☐

It would therefore be crucial from the point of view of the data protection authority ☐

been to the exact wording of the request addressed to the person responsible ☐

know. ☐

11. The application submitted is incomplete in the present form and therefore not ☐

legally compliant. The complaint was therefore in accordance with § 13 para. 3 AVG ☐

to reject.□