

GZ: 2020-0.697.744 from November 12, 2020 (case number: DSB-D124.564)□

[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 Ferdinand A****s data protection complaint□

(Appellant) of May 6, 2019 (ha. received on May 9, 2019) against the□

Labor Market Service Austria (respondent) for violation of the right to information□

(incomplete information) as follows:□

- The complaint is dismissed as unsubstantiated.□

Legal basis: Art. 2 para. 1, Art. 4 no. 1, no. 2 and no. 6, Art. 15, Art. 51 para. 1, Art. 57 para. 1□

lit. f and Article 77 (1) of Regulation (EU) 2016/679 (General Data Protection Regulation, im□

hereinafter: GDPR), OJ No. L 119 of 04/05/2016 p. 1; §§ 4 para. 5, as well as 24 para. 1 and□

Paragraph 5 of the Data Protection Act□

(DSG), Federal Law Gazette I No. 165/1999□

idgF; § 1 of□

Labor Market Service Act – AMSG, Federal Law Gazette No. 313/1994 as amended.□

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

REASON□

1.□

With a procedural submission dated May 6, 2019 (ha. received on May 9, 2019)□

the Complainant submits in summary that the Respondent through□

Provision of incomplete information in his right to information according to Art. 15 DSGVO□

hurt. The complainant submitted a request for information on September 26, 2018□
the respondent, who responded by letter dated October 5, 2018 and□
had been answered with the attachment of a bundle of documents. After reviewing the□
The complainant has the information provided□
found that the transmitted□
Information is not complete because Dr. Ulrike B*** informed the complainant□
found that the complainant's data was also repeated several times in her data extract□
would find again. However, this fact was not claimed by the Respondent□
been informed. At the request of the data protection authority□
as part of a□
Correction of defects (letter from the data protection authority of June 25, 2019) shared the□
Complainant by letter dated July 8, 2019 (received July 10, 2019) that□
Miss Dr. Ulrike B*** is a customer of the Respondent and in her data records the□
personal data of the complainant would appear because the□
Complainant Mrs. Dr. Ulrike B*** at some of her appointments, which she at□
Respondent would have perceived as legal counsel within the meaning of Section 10 (5) AVG□
have supported.□

2.□

With a statement dated October 1, 2019 (received October 2, 2019), the□
Respondent summarized that it was correct that the name of the□
Complainant in the data record of Dr. find Ulrike B*** again. The date is "Name".□
been disclosed to the complainant. Other information - such as the context,□
that the complainant in support talks of the respondent with Ms□
dr Ulrike B *** acted as their "legal adviser", procedural data are the□
Miss Dr. Ulrike B*** and as such her data set and not that of the complainant□
assigned, which is why this information only Dr. Ulrike B*** as part of her□

to be informed of the access to files to which they are entitled. Regarding this information is also

the material scope of the GDPR does not open up, since neither according to the - im

Record of Mrs. Dr. Ulrike B*** - information stored by the complainant in

system could be searched for, nor the data record of Dr. Ulrike B*** herself through the

personal data of the complainant is structured in any way.

Rather, the personal data of the complainant (in the data set of the

dr Ulrike B***) processed as unstructured information and is therefore - as with a

manual processing – the scope of the GDPR in the absence of one

File system according to Art. 4 Z 6 leg. cit. locked out. Since information about persons in

their functions as participants in proceedings before the respondent in many ways

Forms and fields of records may occur, be that of the complainant

requested information only by means of a manual search of the entire system with all its

networked information is possible because no currently available mechanism can handle the complexity

personal identification in and between data. Rather, it should

the fact that someone is a party to the proceedings of another person

appears, by the Respondent each time manually in the data record of the

respective parties involved in the procedure. This was not only with an enormous

effort, but this would also open up further problem areas,

for example, if the party to the proceedings is not yet with the respondent

has been noted, so there is no data record for him yet and one will follow later

should be created for this alone. Carrying out such an effort is not in line with the GDPR

(Art. 11 GDPR), nor can this be done with regard to the principle of

Data minimization may be a possible intention of the right to information. Furthermore

would the excessively increased administrative effort associated with the fulfillment of the task

endanger the respondent. In the opinion of the Respondent would come to that extent

A restriction of the right to information according to § 4 Para. 5 DSG is also possible. Even if

however, such a right to information from a third-party dataset would be affirmed, so
should nevertheless infringe the rights and freedoms of other persons in accordance with Art. 15 (4) GDPR
not be affected. But this would be the case if information from the
Record from Dr. Ulrike B*** would be informed. Any manual blackening of the
External data would not be justifiable with several hundred pages in terms of effort and
fail a technical solution on the premise of perfect and safe
Identification of the personal reference of data. The information provided by the respondent
was complete and lawful as a result and in this respect also corresponded to the
legal obligation to economy, economy and expediency according to § 31
Para. 5 AMSG, which is why it is requested overall that the data protection authority
dismiss the complaint as unfounded.

3.

As part of the granted hearing of the parties, the complainant brought
summarized with a letter dated November 28, 2019 (received December 3, 2019),
that it is factually incorrect when the Respondent argues that
personal data of the complainant would be considered unstructured information
processed because all data is stored in the structure of the database system.
A relational database system with the associated application also represents a whole or
partially automated processing of personal data within the meaning of Art. 2 Para. 1 GDPR
represents. Likewise, the allegation of the respondent, the criterion of
Personality would be complex and not through currently available mechanisms
ascertainable, incorrect. Rather, it is a fact that is easy for everyone to grasp that
any personal data in a text is first and foremost reflected in the mention
of the personal name manifest. Likewise, it is factually incorrect that stored
Information in the Respondent's IT system cannot be searched for, since
all stored information can be searched for at the database level

especially since this is actually the most fundamental purpose of database systems. He could do this

Complainant as a software architect with twenty years of expertise in design,

Implementation and maintenance of IT systems - such as those of the respondent -

prove at any time. Likewise, the objection raised by the respondent that

Carrying out a search or the

Implementation of a search function

personal data in the IT system would be based on the principle of data minimization

Art. 5 Para. 1 lit. c GDPR are ineffective, since the implementation of such

Search function in no way limit the amount of personal data in the IT system

multiply. The objection raised by the Respondent, the grant of - after

Opinion of the complainant - GDPR-compliant data information would be the fulfilment

jeopardize the tasks assigned to him by law, since it reduces the administrative burden

would increase excessively, do not agree, as a decent and technically easy to implement

Search function in the respondent's IT system the administrative effort for - after

Opinion of the complainant - GDPR-compliant data information - only enable and

would be greatly reduced. As a result, it is therefore possible for the Respondent to

To provide data information in such a way that these GDPR are compliant. The Respondent

must, however, adapt its IT system accordingly. The complainant

therefore the request that the data protection authority may order the respondent to

provide the entity relationship diagram of its IT system, the name of the provider

and to disclose the version designation of its database system so that the

Complainant could prepare a database script proving that on the

database level, all stored information can be searched for.

B. Subject of Complaint

Based on the submissions of the complainant, the subject of the complaint is the

Ask whether the Respondent granted the Complainant by issuing a

incomplete information violated the right to information.□

C. Findings of Facts□

The complainant is a customer, Dr. Ulrike B*** is a customer of the Respondent. the□

In addition, the complainant has Dr. Ulrike B*** on some appointments before□

Complainant accompanied.□

On September 26, 2018, the complainant submitted a general request for information□

directed to the Respondent, which the Respondent sent in a letter dated October 5th□

2018, whereby the letter was accompanied by a 146-page bundle with the -□

attached to the data extracts relating to the complainant.□

In the related letter of the Respondent, among other things, the name of the□

complainant as follows (formatting not reproduced 1:1):□

Surname□

Title:□

First name:□

Like.□

Fernando□

Last name: A***□

Evidence assessment: The findings result from the□

insofar undisputed□

Submissions of the parties together with the attached correspondence.□

Under at least one - from the respondent to the person of Dr. Ulrike B*** - electronically□

The name of the complainant and a note can be found in the stored data record□

about his functional role as "legal counsel" in the context of a Ulrike B***□

appointment observed at the respondent□

(Formatting□

not□

1:1□

reproduced):□

03/29/2018 Information / memos / notes□

customer talks to your "legal adviser" -> Mr. Fernando□

A***□

NS EI added□

Application list issued□

new strategy with short appointment intervals and more intensive□

mediation explained□

2 VV issued□

The entry of the complainant under the data set of Dr. Ulrike B*** was born from□

Respondent neither in the letter of October 5, 2018 nor in the course of□

process before the data protection authority that is the subject of a decision.□

Evidence assessment: The finding is based on - in the complainant's submission□

of November 28, 2019 (ha. received on December 3, 2019) -□

data extract. The Respondent confirmed in his statement of 1 October□

2019 expressly states that the complainant's name and the context of his□

functional role as "legal counsel" in the data set of Dr. Find Ulrike B*** again.□

D. In legal terms it follows that:□

The complainant relevates the lack of disclosure of the information / notes of the□

Respondent as legal counsel regarding his mention by name in□

Data set / in the data sets of Dr. Ulrike B*** acted as her "legal adviser".□

D.1. Regarding the personal reference of the allegedly incompletely disclosed data:□

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 [...] or with one or more

special characteristics expressing the physical, physiological, genetic,

psychological, economic, cultural or social identity of this natural person

are can be identified.

With regard to Article 2 lit. a of Directive 95/46/EC, the ECJ has already stated that

The term "personal data" is based on a broad understanding. So he is

Term not limited to sensitive or private information, but includes potentially

all kinds of information of both objective and subjective nature in the form of

Opinions or assessments, provided that they are information

"about" the person in question (cf. the judgment of the ECJ of 20 December

2017, Case Nowak, C-434/16).

These considerations can be transferred to the current legal situation according to the GDPR

since the definition of "personal data" according to Art. 2 lit

Directive 95/46/EG was taken over in Art. 4 Z 1 DSGVO.

Information "about" a specific person is available, among other things, if data relates to the

situation of a person (cf. the opinion of the Art. 29 Working Party on Data Protection

4/2007 on the term "personal data", WP 136, 01248/07/DE, p. 10).

Based on this, it should be noted as an interim summary that the note in

Record of Mrs. Dr. Ulrike B***, a personal data in accordance with Art. 4 Z 1

GDPR acts. It

lie namely

insofar

(also)

information

"on the

Complainant before, as based on this information linked to his name

his functional role as counsel can be concluded.□

D.2. For the material scope of the GDPR for the memorandum/notes see□

the dataset of Dr. Ulrike B***□

The Respondent□

doubted□

in□

his argument□

the□

factual□

Scope of application of the GDPR regarding the data set in question if it is in□

states in his opinion that the subject of the complaint□

information as□

unstructured information under the record of Dr. Ulrike B*** processed and therefore –□

as with manual processing - the scope of the GDPR in the absence of□

Existence of a file system according to Art. 4 Z 6 leg. cit. be excluded.□

Art 2 GDPR standardizes the material scope of the GDPR. Art. 2 para. 1 GDPR□

speaks of “fully or partially automated processing of personal data□

as well as non-automated processing of personal data that□

in one□

file system are stored or are to be stored” (cf. Heissl in Knyrim [ed.],□

DatKomm, Art 2 GDPR, Rz. 44).□

Art. 4 Z 2 DSGVO defines the processing as “everyone with or without the help of automated□

Procedure performed operation or any such series of operations in connection with□

personal data such as collecting, recording, organizing, sorting, the□

Storage, adaptation or modification, reading out, querying, the□

use, disclosure by transmission, dissemination or any other form of□

Providing, matching or linking, restricting, deleting or

Destruction".

Art. 4 Z 6 GDPR understands a file system as “any structured collection

personal data accessible according to certain criteria, regardless of

whether this collection is centralized, decentralized or after

functional or geographic

is conducted in an orderly manner”.

There must therefore be a certain criterion according to which a collection is accessible,

such as name, address or gender or it must be a scheduled

act as a compilation of individual pieces of information that have an internal connection

(cf. Hödl in Knyrim [ed.], DatKomm, Art. 4 GDPR, margin no. 72).

As far as the Respondent believes that the - quite credible -

Appearing, lack of structure and non-findability of the - under the data set

from Dr. Ulrike B*** – pictured

Information of the restriction of the factual

Scope of application of Art. 2 Para. 1 GDPR, he fails to recognize that these

Restriction only for non-automated processing - i.e. purely manual

Processing - is used (cf. Kühling Buchner, comment on data protection

Basic Regulation, Art. 2 GDPR, margin no. 17, cf. also the decision of

Data Protection Authority of January 14, 2019, GZ: DSB-D123.224/0004-DSB/2018). That it

is a purely manual processing, but was itself by the respondent

not listed.

As an interim summary

consequently

be recorded that the factual

Scope of application of the GDPR, contrary to the opinion of the respondent, as a result

is opened.□

D.3. On the right to information□

a. According to Art. 15 Para. 1 GDPR, the person concerned has the right from the person responsible□

to request confirmation as to whether personal data concerning you□

are processed and, if this is the case, information about this personal data□

to receive data and to be entitled to the information pursuant to lit. a to h leg. cit.□

Art. 15 para. 1 GDPR reads (emphasis added by the data protection authority):□

Article 15□

Right of access of the data subject□

(1) The data subject has the right to obtain confirmation of this from the person responsible□

to request whether personal data concerning them are being processed; is this the□

If so, you have a right to information about this personal data and the following□

Information:□

the processing purposes;□

a)□

b) the categories of personal data being processed;□

c) the recipients or categories of recipients to whom the personal□

Data has been disclosed or will be disclosed, in particular to recipients□

in third countries or with international organizations;□

d) if possible, the planned duration for which the personal data will be stored,□

or, if that is not possible, the criteria used to determine that duration;□

e) the existence of a right to rectification or erasure of data concerning them□

personal data or restriction of processing by the□

controller or a right to object to this processing;□

f) the existence of a right of appeal to a supervisory authority;□

g) if the personal data are not collected from the data subject, all□

available information about the origin of the data;□

h) the existence of automated decision-making including profiling pursuant to□

Article 22(1) and (4) and — at least in these cases — meaningful□

Information about the logic involved as well as the scope and the desired ones□

Effects of such processing on the data subject.□

(2) If personal data is sent to a third country or to an international□

Organization transmits, the data subject has the right about the appropriate□

Guarantees to be informed in accordance with Article 46 in connection with the transfer.□

(3) The person responsible shall provide a copy of the personal data that is the subject of the□

processing are available. For all further copies made by the data subject□

requested, the person responsible can charge an appropriate fee on the basis of□

require administration costs. If the data subject submits the application electronically,□

to make the information available in a commonly used electronic format, provided that□

she says nothing else.□

(4) The right to obtain a copy referred to in paragraph 1b shall not affect the rights and freedoms□

not affect other people.□

In the English version of the GDPR, Art. 15 (1) sentence 1 reads “The data subject shall□

have the right to obtain from the controller confirmation as to whether or not personal data□

concerning him or her are being processed, and, where that is the case, access to the□

personal data and the following information: (...)”□

A similar wording can be found in Recital 63, 1st sentence leg. cit., if to be read□

is□

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

personal data that has been collected and this right easily□

and at reasonable intervals to be aware of the processing□

and to be able to check their legality.”□

As the data protection authority stated in its decision of April 18, 2019, GZ D122.913/0001-

DSB/2019, is information in accordance with Art. 15 GDPR on your own data

limited, i.e. to data which - according to the wording of Art. 15 Para. 1 DSGVO - "you - ie.

the data subject - personal data concerned". therefore exists

In principle, you still have no right to information about your personal data

Third parties, unless there are special reasons for this in individual cases (cf. e.g. the

Notice of June 6, 2018, GZ DSB-D122.829/0003-DSB/2018).

The data protection authority is of the opinion that the

File memos/notes under the record of Dr. Ulrike B***, after which the

complainant had acted as "legal counsel" at appointments, at least not that

data directly affecting the complainant. Rather, the name of the

complainant in one - Dr. Ulrike B*** concerned - record on to in a

memo-like form the complainant's presence as "counsel"

for dr Document Ulrike B*** according to § 10 Abs. 5 AVG at an appointment.

The data protection authority therefore sees the lack of data concerning the complainant -

these may also be personal by naming the complainant

- No breach of the respondent's obligation to provide information within the meaning of Art. 15 (1).

GDPR. In this case, there are also no special reasons that exist in this individual case for a

information would speak, especially since the complainant's presence as

"Legal Counsel"/companion for Dr. Ulrike B*** during the appointments with the respondent

was aware and he had to expect that his presence would be documented.

b. But even if one did not follow this view of the data protection authority and

believes that those under the dataset of Dr. Ulrike B*** appearing dates

data relating to the complainant, the complaint turns out to be based on the

the following considerations as unfounded:

To the data requested by the complainant in the processing of the respondent

To be able to find and provide information, it is necessary to know that the complainant

as part of one of Dr. Ulrike B*** perceived by the respondent

Counseling session as their "legal counsel" was present to follow up later

this circumstance under the dataset of Dr. Ulrike B*** the relevant

Find information/documentation/notes. Alternatively – without specifying the

Complainant - the Respondent would have all records of all his

existing and former customers and the information under them manually

have to search to find the relevant information.

In the present case, the Respondent appeals in this context

the exception according to § 4 para. 5 DSG, according to which the right to information according to Art. 15 DSGVO

towards a responsible person acting sovereignly, without prejudice to other legal ones

Restrictions do not exist if the provision of this information results in fulfillment

of a task assigned by law to the person responsible would be at risk.

The Respondent is beyond doubt with regard to the processing in question

to be regarded as responsible for the public sector (cf. Gerhartl in yearbook

Social Security Law 2018, Data Protection and Unemployment Insurance, 113, page 134 f).

§ 4 Para. 5 DSG entitles official responsible persons to reject or also

Partial refusal of information if otherwise the fulfillment of one of the responsible persons

legally assigned task is jeopardized

(cf. Thiele/Wagner

[Ed.],

Practical commentary on the Data Protection Act, § 4, Rz. 83).

The Respondent processes a large amount of

information about the

Complainant, since he has been providing the services of the

Respondent claims, which is also evident from the 146-page document

Data excerpt that the respondent sent to the

complainant has sent, enlightened.

Based on the credible statements of the Respondent, according to which a discovery

of relevant incomplete information searching through all data records of all

existing and former customers and the information thereunder requires

had, the data protection authority sees a general (and not just the specific

Data information of the complainant concerning) endangerment of - the person responsible

Tasks of implementing labor market policy assigned pursuant to Section 1 (1) AMSG

of the federal government as given if the obligation to provide information with such a far-reaching

Obligation to manually search the entire customer base.

c. If the complainant further requests that the data protection authority

Respondent apply the Entity Relationship Diagram of his

IT system

submitted, as well as the name of the provider and the version number of his

disclose the database system so that the complainant can prove that on the

database level

in the

Respondent's IT system after all saved

Information can be searched for, according to the data protection authority

Assess the complainant's allegations. A general argument that from

There is conjecture, amounts to an inadmissible exploratory evidence, to which

The data protection authority is not obliged to record (cf. the decision of the Administrative Court of

3 January 2018, Ra 2017/11/0207, case 3).

It was therefore to be decided accordingly.