

GZ: DSB-D123.223/0007-DSB/2018 from 26.11.2018□

[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.]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint of Mag. Erwin□

A\*\*\* (complainant), represented by Dr. Johann B\*\*\*, lawyer in \*\*\*\* Vienna, dated□

July 13, 2018 against the N\*\*\* drugstore and perfumery market Ges.m.b.H.□

(Respondent), represented by E\*\*\* Rechtsanwälte Ges.m.b.H. in Vienna,□

due to violation of the right to information as follows:□

- The appeal is dismissed.□

Legal basis: Section 24 (1) and (5) of the Data Protection Act (DSG), Federal Law Gazette I□

No. 165/1999 as amended; Art. 12 para. 3, 15 and 77 of Regulation (EU) 2016/679□

(General Data Protection Regulation - GDPR), OJ No. L 199 p. 1.□

REASON□

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

With an entry dated July 13, 2018 (logged to GZ D123.223), the□

Complainant alleged a violation of the fundamental right to data protection, relied on Art. 6□

GDPR and complained about a violation of the duty to provide information, in which case he complained about several□

Respondent designated.□

In accordance with the defect rectification order dated July 27, 2018,□

Complainant by letter dated August 27, 2018 further complaints relating to the□

GZlen D123.482, D123.483 and D123.484 as well as D123.485 were logged.□

In the present complaint, the complainant alleged an infringement in the right to information and essentially submitted that he had an application for Information sent to the respondent by email on June 11, 2018. With In a letter dated June 27, 2018, attorney Dr. E\*\*\* the request of Complainant with attachment of a data excerpt from F\*\*\* Warenhandels AG answered. It was clear from the letter that the complainant was not a member was in the Respondent's customer club and therefore not relevant to the information data would be available. This reply is treated as a refusal by the complainant and not qualified as a mere oversight, particularly in view of the enormous Respondent's company size. The complainant has a "N\*\*\*-CARD" and was able to use it successfully on July 11, 2018, among other things. be it therefore completely incomprehensible why the Respondent failed in its duty to provide information descendant. By refusing to provide information, the complainant in his Right to information according to Art. 15 GDPR with regard to your personal data injured.

At the request of the Respondent, the deadline for submitting a statement extended by the data protection authority until November 5, 2018.

In a statement dated November 2, 2018, the Respondent stated that the alleged violation of the right to information pursuant to Art. 15 GDPR subsequently had been eliminated. It is correct that the complainant by letter dated 27 June 2018 the information was given that the respondent was not a member of the complainant in their customer loyalty program is known. In the course of the object of the complaint proceedings is now the respondent it has become known that the complainant is a participant in the Respondent's customer loyalty program. Process accordingly the respondent personal data of the complainant,

in particular for the implementation of this customer loyalty program. To

When this new information became known, the Respondent had to issue the

provide correct information to the complainant. By letter dated October 30th

In 2018, the respondent received the complainant's request for information

answered correctly and completely.

In a letter dated November 19, 2018, the data protection authority informed the

Complainant with reference to § 24 para. 6 DSG with that they are through the reaction

the Respondent considers the present complaint to be pointless.

The complainant will receive within a period of two weeks within the framework of the

Hearing of the parties according to § 45 Abs. 3 AVG the possibility to justify why he

original infringement (no disclosure of information) at least partially still

before as not eliminated.

By letter dated November 21, 2018, the complainant stated, "if within

within this period (meaning: Art. 12 Para. 3 GDPR) no reaction to the request for information

takes place, there is in any case a violation of the right to information." It will therefore

expressly stated that the Respondent only fulfilled its obligation to provide information after

submitted the complaint in question and was therefore late in doing so,

which is why the violation of rights is beyond doubt. It has therefore on the part of

Respondent had gross organizational fault.

In order to protect his legitimate interests, the complainant therefore requested that

the data protection authority with the intended termination of the procedure

Failure to provide information in accordance with Art. 15 GDPR on the part of the respondent

(because of organizational fault - at least - due to gross negligence

sides of the Respondent), in event, the non-disclosure of the information

Art. 15 GDPR on the part of the respondent before filing the complaint (due to

Organizational fault - at least - due to gross negligence on the part of

complainant), in event of the (significantly) late provision of information pursuant to

Art. 15 GDPR (because of organizational fault - at least - due to gross

negligence on the part of the Respondent).

#### B. Subject of Complaint

The question arises as to whether the complainant is thereby in his right

for information was violated because his request for information was delayed but before it was completed

of the procedure before the data protection authority.

#### C. Findings of Facts

In a letter dated June 11, 2018, the complainant requested the respondent

to provide him with information about the processing of his personal data in accordance with Art. 15

GDPR to grant.

In a letter dated June 27, 2018, the legally-friendly represented

Respondent received the information from F\*\*\* Warenhandels AG. In addition, in

Writing stated that further memberships in other customer clubs (e.g. Z\*\*\*

and N\*\*\*) are not known.

The Respondent replied in a letter dated October 30, 2018

Complainant's request for information dated June 11, 2018.

Evidence assessment: The statements made are based on what is undisputed in this respect

submissions of the parties and on the content of the files.

#### D. In legal terms it follows that:

The respondent sent his request for information on June 11, 2018 to

Respondent submitted. The one-month period of Art. 12 Para. 3 Sentence 1 GDPR

ended on July 11, 2018.

Art. 15 GDPR regulates the data subject's right to information and the associated

related communications and actions by the controller. The person concerned

may request confirmation as to whether their personal data is being processed

became. In the case of processing, the data subject has a right to

Information about the personal data as well as details in paragraph 1 lit. a to h leg. cit

defined information. The purpose of the standard is to give the data subject an insight into

the "if and how" of the processing (Art. 4 Z 2 DSGVO) of personal data

to allow. A fair and transparent processing feeds not least from the

Possibility for the data subject to express themselves easily and at reasonable intervals

(cf. recital 63) not only about the existence of the processing operation and its purposes

(Recital 60), but also in particular about various other

intentions and legal consequences related to the processing. This should the

affected person to review the lawfulness of the processing

will. The right to information and the associated notifications and measures

thus also serve for effective legal enforcement (cf. Paal in Paal/Pauly,

General Data Protection Regulation, Art. 15, para. 3).

The aim of the complaints procedure based on Art. 15 GDPR is to obtain information about the

processing of personal data by the respondent.

Accordingly, the Austrian legislator for those responsible in § 24 para. 6 DSG

created the possibility of pursuing alleged legal violations until the end of the

to eliminate proceedings before the data protection authority.

It can be inferred from the complaint that the request for information from the

Complainant's request has been complied with, albeit belatedly. a Vorbing,

according to which the information was provided inadequately, the complaint is not entitled

remove.

However, the complainant is thus free from complaints because he has the requested

information undisputedly available.

On the argument that the information was not provided within the period of Art. 12 (3) GDPR

has been granted, it should be noted that Art. 77 GDPR (in conjunction with Section 24 DSG) only

It is right to lodge a complaint with a supervisory authority and thereby□

Enforcement of subjective rights - if necessary by means of official performance mandate -□

to allow. A right to ascertain that the information was provided too late,□

however, cannot be inferred from this provision (cf. on this□

Comparable legal situation according to the DSG 2000 the knowledge of□

Administrative Court of September 27, 2007, ZI. 2006/06/0330, with further references).□

Against this background, the decision had to be made according to the verdict.□