

GZ: DSB-D123.077/0003-DSB/2018 from August 13, 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 Ernst-Josef's data protection complaint□

A*** (complainant) of June 25, 2018 against N*** Medienhaus AG□

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

- The complaint is rejected.□

Legal basis: Section 9 (1) of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended;□

Art. 51 ff and Art. 85 of Regulation (EU) 2016/679 (General Data Protection Regulation -□

GDPR), OJ No. L 119 of 4 May 2016, p. 1.□

REASON□

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

1. With a submission dated June 25, 2018, the complainant alleged a violation in□

Right to erasure and submitted that on June 11, 2018 he requested the erasure of his□

I requested user comments in the Respondent's online forum. the□

Respondent requested the deletion of his user comments by letter dated 12.□

June 2018 but denied. The complaint is the complaints procedure before the□

Data Protection Authority previous correspondence between complainant and□

appellant attached.□

2. With a statement dated July 18, 2018, the Respondent brought□

summarized, that the discourse in the online forum through the□

media privilege under data protection law from the scope of the rights of those affected

would be exempt. Deleting individual discussion posts would result in a

lead to a distorted representation of the discussion in question, since the deletion also

the posts of other users would be taken out of context. The one in the

Discussion exchanged information would not be for the readers of the discussion

more understandable why the freedom of information in the online forum of

Respondent would be at risk. Likewise, the erasure would be more complete

Discussion trees from the online forum endanger the freedom of information and the

interfere with the discussion of the participating users. Users would both in the

Forum rules ("Community Rules") as well as in the "FAQ" for the online forum and in the

Data protection declaration on how to deal with your data protection law

The rights of those affected are informed in the online forum. This information would

in particular dealing with the deletion of published postings

include. The reference to the "Community Rules" would also be added to each individual

"Posting activity" by users of the online forum.

3. In his opinion of 20 July 2018, the complainant submitted that

that deleting postings does not impair "freedom of expression".

would become. Many comments can be found under "Polemics", but not under

"Freedom of Speech".

B. Subject of the proceedings

Based on the submissions of the parties, it follows that it must first be examined whether the

data protection authority is responsible for handling the complaint in question.

C. Findings of Facts

1. The Respondent operates an online community on the website

https://www.n***-media.at and puts articles online on various topics every day

are generally accessible. The Respondent also operates an online forum.

This online forum is one of the largest discussion platforms in the German-speaking world□
Space. Users can register an account on the website free of charge and□
this account the articles posted online by the Respondent in the form of□
Comment on postings and discuss with other users. The discussion takes place□
below the online articles. There is a possibility on postings□
to respond ("reply") to other users, thereby creating a discussion tree□
arises. It is also possible to rate other users' posts (green for□
agreeing, red for disagreeing).□

Evidence assessment: The statement made is based on the publicly available□
Webpage of the Respondent, https://www.n***-media.at (accessed on August 10□
2018).□

2. The complainant is in the online forum of the respondent as□

User registered and in the Respondent's online forum since about [note□
Editor: Date deleted] active. With an application dated June 11, 2018, he requested the□
Respondent to the postings written by him with the user name□
Delete "****Geiger" in the online form. The complainant has against the□
Respondent disclosed his full name (Ernst-Josef A***). the□
Respondent informed the complainant in a letter dated June 12, 2018,□
not to comply with the request for deletion. The complainant then brought□
on June 25, 2018, a complaint regarding a violation of the right to erasure at the□
data protection authority.□

Evidence assessment: The statements made are based on the undisputed□

Submissions of the complainant of June 25 and July 20, 2018.□

D. In legal terms it follows that:□

1. Applicable legislation□

Art. 85 para. 1 and 2 GDPR reads including the title (emphasis added by the□

Data Protection Authority):

Article 85

Processing and freedom of expression and information

(1) Member States shall legislate the right to protection

personal data under this regulation with the right to

free

expression of opinion and

Freedom of information, including processing to

journalistic purposes and for scientific, artistic or literary purposes

purposes, in accordance.

(2) For processing for journalistic purposes or for scientific,

artistic or

literary purposes, see the Member States

Derogations or exceptions to Chapter II (Principles), Chapter III (Rights of

data subject), Chapter IV (Controller and processor), Chapter V

international

(Transfer of personal data to third countries or to

organizations),

supervisory authorities),

Chapter VII

for special

(Cooperation and Coherence) and Chapter IX

processing situations) where this is necessary to exercise the right to protection of the

personal data with the freedom of expression and the

reconcile freedom of information.

(Independent

(Regulations)□

Chapter VI□

§ 9 DSG as amended by Federal Law Gazette I No. 24/2018 (Data Protection Deregulation Act 2018) reads together□

Headline (emphasis added by the data protection authority):□

Freedom of expression and freedom of information□

§ 9. (1) On the processing of personal data by media owners,□

Editors, media workers and employees of a media company or□

Media service within the meaning of the Media Act – MedienG, Federal Law Gazette No. 314/1981□

journalistic purposes of the media company or media service□

Provisions of this federal law and Chapter II of the GDPR□

(principles),□

(Responsible and□

processor), V (transfer of personal data to third countries or to□

international□

vii□

special□

(Cooperation□

Processing situations) not applicable. The data protection authority has exercised□

of their powers over the persons named in the first sentence, the protection of the□

Editorial confidentiality (Section 31 MedienG) must be observed.□

(rights of the data subject),□

supervisory authorities),□

organizations),□

(Independent□

(Regulations□

Coherence)□

and□

and□

for□

IX□

VI□

IV□

III□

(Rights of the data subject), Chapter IV□

(2) To the extent necessary to exercise the right to protection of personal data□

Data consistent with freedom of expression and information□

bring, find from the GDPR Chapter II (Principles), with the exception of Art. 5,□

Chapter III□

(Responsible and□

Processor), with the exception of Art. 28, 29 and 32, Chapter V (Transfer□

personal data to third countries or to□

international organizations),□

Chapter VI (Independent Regulators), Chapter VII (Cooperation and Consistency)□

and Chapter IX (Regulations for special processing situations) on the processing,□

done for scientific, artistic or literary purposes, none□

Application. In such cases, § 6 of the provisions of this federal law applies□

(data secrecy) to apply.□

2. On the freedom of information privilege according to § 9 DSG□

In § 9 DSG, the previous data protection law media privilege according to § 48 DSG 2000,□

Federal Law Gazette I No. 165/1999 as amended by Federal Law Gazette I No. 83/2013, with an extended scope of application

system of GDPR transposed. The national regulation in § 9 DSG ties in with this□

Art. 85 GDPR, a basic provision including an opening clause, and expands iSv□

Art. 85 para. 2 GDPR the scope of the privilege on any processing

personal data that is used for journalistic (paragraph 1 leg. cit.) or

scientific, artistic or literary (paragraph 2 leg. cit.) purposes.

One can therefore benefit from a freedom of information privilege under data protection law (hereinafter

only: "privilege") speak (cf. analogously Suda/Veigl in

Gantschacher/Jelinek/Schmidl/Spanberger, Data Protection Act1 § 9 para. 1, still with

Reference to § 9 DSG as amended by Federal Law Gazette I No. 165/1999 as amended by Federal Law Gazette I No. 120/201

Amendment Act 2018)).

In the present case, the Respondent, as stated, provides articles on various

topics online. These articles are undisputedly subject to the privilege of Section 9 (1) DSG. to

check is, however, whether the discourse between users in the online forum - ie

the postings of the users below the articles - from the privilege according to § 9 Abs. 1 DSG

is recorded. § 9 paragraph 2 DSG, which refers to the processing, does not apply

personal data to scientific, artistic or literary

purposes.

3. Regarding the personal reference in the present case

§ 9 DSG refers to the processing of personal data. Nevertheless the

Respondent did not complain about this point in the course of the proceedings

Completely point out that in the present case personal data

of the complainant: This has his full name (Ernst-Josef

A ***) disclosed to the respondent, which is why the postings or the

Content of the postings can be traced back to the complainant and thus he

identified to the Respondent.

4. On the application of Section 9 (1) DSG to postings in the online forum

a) General information about postings in the online forum

The national legislator limits the privilege according to § 9 Abs. 1 DSG by the

Privilege is only accessible to media companies or media services, provided

personal data for journalistic purposes by media owners,

Publishers and media workers or employees of a media company or

media service are processed.

Processing of personal data for journalistic purposes is based on

understanding of the ECJ, however, if the processing has the sole purpose of

To disseminate information, opinions or ideas to the public (cf. the judgment

of the ECJ of December 16, 2008, C-73/07 - Satakunnan Markkinapörssi and

Satamedia, para. 62). Furthermore, according to the ECJ, journalistic activities

not only reserved for media companies (cf. ECJ loc. cit., para. 61). For the

Applicability of the privilege according to § 9 para. 1 DSG is therefore solely the

Processing purpose decisive.

To understand the importance of freedom of expression in a democratic

To take account of terms such as journalism, which refer to this society

be interpreted broadly (recital 153 last sentence GDPR).

Thus, data is always processed for journalistic purposes,

if the objective is publication for an indefinite group of people (cf.

Buchner/Tinnefeld in Kühling/Buchner, General Data Protection Regulation¹ Art. 85 para. 17).

Against this background, the privilege according to § 9 para. 1 DSG

Union legal understanding and can be interpreted in the light of case law

of the ECJ also include “citizen journalism” (e.g. internet discussion forums), the

the purpose of unilateral or reciprocal communication of ideas, opinions

and information is tracked (cf. analogously Suda/Veigl in

Gantschacher/Jelinek/Schmidl/Spanberger, Data Protection Act¹ § 9 para. 3, still with

Reference to § 9 DSG as amended by Federal Law Gazette I No. 165/1999 as amended by Federal Law Gazette I No. 120/201

Amendment Act 2018)).

b) Postings by the complainant in the online forum□

In the present case, the Respondent, as the person responsible within the meaning of Art. 4 Z 7□

DSGVO one of the largest discussion platforms in the German-speaking area□

Available, so that one must assume without a doubt that submitted postings□

on various topics are accessible to an indefinite number of people. Self□

when the complainant is only giving his or her opinion on a certain subject□

and is not at all interested in a discussion, he must assume that□

other users react to his posting (either in the form of a reply or in the form of a□

an evaluation of the posting with red or green).□

4. Competence of the DPA and Outcome□

The privilege under Section 9 (1) DSG excludes the application of Chapter VI GDPR□

("independent supervisory authorities"). Not excluded by the privilege is the□

Application of the provisions of Chapter VIII GDPR ("Remedies, Liability and□

sanctions"). The complaint to the data protection authority granted in Art. 77 GDPR is□

however, as well as the imposition of a fine by the data protection authority□

nevertheless excluded, since the authority to issue orders and sanctions□

Data protection authority (Chapter VI, in particular Art. 58 Para. 2 lit c and i DSGVO) for□

Data processing under the protection of privilege does not apply mandatorily. This□

The conclusion follows directly from Art. 85 Para. 2 GDPR (cf. analogously again Suda/Veigl in□

Gantschacher/Jelinek/Schmidl/Spanberger, loc.cit. margin no. 2).□

As a result, the data protection authority is responsible for handling the complaint□

not competent in the present case, which is why a decision had to be made in accordance with the verdict (cf□

already on the comparable legal situation according to the DSG 2000 the decision of□

Data Protection Authority of June 27, 2016, GZ D122.455/0003-DSB/2016).□

Incidentally, it should be pointed out that the privilege under Section 9 (1) DSG also□

Application of the provisions of Chapter III GDPR ("rights of data subjects") excludes□

and therefore the right to erasure according to Art. 17 GDPR would not even come into question. □