GZ: DSB-D123.270/0009-DSB/2018 from 5.12.2018

[Editor's note: 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 may be abbreviated and/or changed for reasons of pseudonymization.

Corrected obvious spelling, grammar, and punctuation errors.]

NOTICE

S P R U C H

The data protection authority decides on the data protection complaint of Dr. Xavier X****

(Appellant) of July 27, 2018 against **** AG (Respondent) because of

Violation of the right to erasure as follows:

- The complaint is dismissed.

Legal basis: Article 2 paragraph 1, Article 17 paragraph 1, Article 55 paragraph 1, Article 57 paragraph 1 letter f and Article 77 p

1 of Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR), OJ No. L 119 p. 1;

Section 24 (1) and (5) of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended

REASON

A. Submissions of the parties and course of the proceedings

1. With a submission dated July 27, 2018, the complainant alleged a violation of the right to

Deletion and submitted that on July 2, 2018 (and again on July 4, 2018) he filed an application

Deletion of all his data to the Respondent. The Respondent

However, I refused the complete deletion of his data in a letter dated July 9, 2018.

The submission is the one preceding the complaints procedure before the data protection authority

Correspondence between complainant and respondent attached.

2. In a statement dated August 21, 2018, the Respondent summarized that

that the data referred to by the complainant is a general online

Advisor request for a car insurance dated July 2, 2019. Because of

request for deletion, the Respondent immediately carried out a search in its IT

systems in order to be able to clearly identify the data subject. I have the

Respondent two contractual relationships with a legal protection company that have been canceled since 2015/2016

and car insurance in the name of the respondent. That in the canceled

However, the date of birth that corresponds to the contracts does not match the one in the request

announced match. For clear identification, the complainant was with

letter dated July 4, 2019, asked to send a copy of ID, whereby the

complainant failed to comply with this request. The complainant has

believes that his identity is already sufficiently clear from the e-mail address in the online mask

be assignable. Due to the continuing reasonable doubts about the clear

The respondent has the identity of the processing of the personal data from the

The complainant's internet request has meanwhile been restricted. As more

As an immediate measure, ***** AG has the personal contact details of the

complainant - despite the fact that his identity has not yet been finally clarified - for all marketing purposes

turned off.

Against the background of a lack of a contractual relationship, the Respondent again

checked their database and consulted the responsible customer advisor.

This has confirmed that the complainant in any case with the person of the online application

match. The respondent then took further steps and dem

data that can be clearly assigned to the complainant - depending on the system - either deleted immediately,

or "Anonymized in compliance with GDPR". A traceability to his person is therefore

irrevocably excluded. This procedure is also clear within the meaning of Art. 17 GDPR

permissible and to be equated with a deletion. Furthermore, the Respondent - although

not required under data protection law - assured the complainant on August 2, 2018,

that this anonymized data will be final in the next automatic deletion run in March 2019

would be deleted from the systems.

3. By letter dated September 4, 2018, the complainant replied that the

complaint regarding the initially alleged infringement.□

The Respondent is legally mistaken if it thinks that it has no right to erasure□

to the next deletion period in 2019. Rather, he has a legal right to immediate□

Data deletion due to the omission of the fulfillment of the purpose, namely its non-binding□

Inquiry via comparison portal. Citing the Art. 29 Working Party, he stated that□

that it would be preferable to destroy the data when they were no longer needed.□

Data that, viewed in isolation, would not be personal could be associated with Big□

Data may be "de-anonymized" under certain circumstances. Deletion may be made upon application by a□

Affected or if the reason for deletion exists, therefore no longer than absolutely necessary□

be delayed. It was an inquiry about a product from□

Respondent traded via a comparison portal, thus a procedural stage beyond□

any legal contractual relationship. However, if the Respondent were wrong□

from a "mismatch" of the old data and the data of the online request, then it would have of itself□

had to delete the most recent (allegedly) inaccurate personal data. the□

immediate right to erasure exists even without the complainant's request.□

4. At the request of the data protection authority, the respondent submitted a statement□

from October 3, 2018. This is how it is - summarized - the□

original customer relationship ("KUV") as part of the Complainant's request□

Implementation of the following combined steps of deletion and anonymization have been removed:□

1) Deletion of the offer: Both the customer request and the offer that is due to the□

The customer's online information would have been created by the customer management system□

been deleted.□

2) Deletion of all electronic contacts (email address, telephone number, etc.) of the customer.□

3) Change of person (surname, first name, address): Both the name and the address have been changed□

an anonymous, non-assignable person (Max Mustermann) with the same gender and□

date of birth has been irrevocably overwritten manually.□

4) The now empty customer connection is only assigned to Max Mustermann.

5) The internal process that started automatically with a customer connection was stopped immediately

been.

6) merging the person to be deleted into the new anonymous person to ensure

that the override is also technically sustainable.

7) Deletion of the customer in the electronic file (history).

By implementing all of the steps described, a factual anonymization of the

original customer connection by overwriting it with a "Dummy

Customer connection" has been brought about. It would no longer be personal data

and therefore no identifying features associated with the original online request

of the customer could be connected. Rather, there is only one

empty customer connection to Max Mustermann and would therefore not be further

Information available that would point to the complainant. Also legally

corresponds to the anonymization of personal data carried out in this way

permanent deletion, since the data is no longer personal and therefore

would be withdrawn from the scope of the GDPR.

5. The complainant then replied - according to the parties to the results of the

preliminary proceedings - summarized in his statement of October 25, 2018 that

the original alleged infringement (deletion and restriction).

will be maintained. The Respondent's "anonymization procedure" indicates that

that his claim for deletion is possible immediately, but this until the next deletion period in 2019

wait The Respondent is running an immense effort to get the final

withdraw deletion. Nothing has been brought forward, which is why the final deletion is not

can be done promptly. In any case, it is of a primacy of timely, final deletion

to go out Deletion may not be made upon request or if there is a reason for deletion

be delayed longer than is absolutely necessary. Thus, it turns out that the only after nine

Months of deletion is legally to be qualified as delayed. The opinion is

a request for restriction of processing dated September 4, 2018 to the

appellant attached.

6. At the request of the data protection authority by letter dated November 7, 2018, the

The Respondent led to explain the process of removing the personal reference in more detail

summarized in a letter dated November 16, 2018 that in addition to the in the letter

of October 3, 2018 explained the anonymization by merging the

Personal master with an existing sample customer (“dummy”). Everyone would be there

Master data taken over from the sample customer, which means that it is no longer possible

to successfully search for the person concerned in the systems. In addition, there are no referenced ones

Objects that contained data that would allow identification. Furthermore, would

no personal data is stored in the log data because of the identification

exclusively via key figures (“IDs”). However, the link would be irreversible there

been removed. A restoration or reconstruction of the data also from the log data

is not possible. The Respondent has screenshots for technical traceability

added from the work process.

7. The complainant was informed by letter dated November 21, 2018 of the Data Protection Authority

granted to belong to parties. The complainant made no further comments on the matter.

A corresponding forwarding report is enclosed with the file and there is no error message

of an email server.

B. Subject of Complaint

Based on the submissions of the complainant, it follows that the subject of the complaint is the

The question is whether the Respondent thereby gives the Complainant the right to erasure

has violated by complying with his request for deletion of July 2, 2018, that

Parts of his personal data have been made unrecognizable by anonymization,

so that a reference to his person is no longer possible or only with disproportionate effort

is possible.

C. Findings of Facts

1. The Respondent stores personal data of the Complainant in its

System. By letter dated July 2, 2018, the complainant requested the deletion of all of his

data stored by the respondent. In a letter dated July 9, 2018, the

Respondent with the fact that all contact data stored for marketing purposes of the

complainant would have been deleted. The complainant then brought submissions

of July 27, 2018 to the data protection authority a complaint about a violation of the law

on deletion.

Evidence assessment: The statements made are based on the input that is undisputed in this respect

of the complainant dated July 27, 2018 and the attached correspondence between

complainant and respondent.

2. The Respondent has until the conclusion of the proceedings before the data protection authority

deleted all of the complainant's personal data from their system by

Data partially destroyed from their system and partially the personal reference of the data to

Complainant has irrevocably removed. A reconstruction of the personal reference is -

if at all - only possible with a disproportionate amount of effort. The Respondent

at the request of the data protection authority, set out the process in which the

Personal reference to the complainant's data has been removed. The opinion of

Respondent of October 3, 2018 and November 16, 2018 will den

Findings of fact are taken as a basis.

Evidence assessment: The findings made are based on the comprehensible

Statements by the Respondent dated August 21, 2018, October 3, 2018 and

November 2018 and on the screenshots from the work process presented therein

Respondent. The complainant did not dispute these findings either, but

brought only to the point that of a primacy of immediate and definitive extinction

was to be assumed and the Respondent had not put forward any argument as to why the

final deletion cannot take place in a timely manner.

D. In legal terms it follows that:

D.1 About the term “anonymization”

It should be noted at the outset that the binding part of the GDPR is that of the

Respondent does not know the term "anonymization" used.

Only in recital 26 is it stated that the GDPR does not apply to anonymised

Finds data, which means information “that does not refer to an identified

or identifiable natural person, or personal data contained in a

have been made anonymous in such a way that the data subject is not or no longer identified

can be".

D.2 To remove the personal reference ("anonymization") as a means of deletion

A definition of the term "deletion of personal data" within the meaning of Art. 17 Para. 1 can be found

neither in the binding part of the GDPR nor in the recitals of the regulation. According to Art. 4 Z 2

erasure and destruction are listed as alternative forms of processing ("the

Deletion or destruction"), which are not necessarily congruent. From this it is evident that a

Deletion does not necessarily require final destruction (cf. the notice of

former DSK of September 26, 2008, GZ. K121.375/0012-DSK/2008, still in relation to Art 2

letter b of Directive 95/46/EC, which also differentiates between deletion and destruction

would; see also Kamann/Braun in Ehmann/Selmayr (eds), General Data Protection Regulation

[2017] Art. 17 para. 32). Such a differentiation also results from the case law of

Constitutional Court (cf. VfSlg. 19.937/2014).

Therefore, the person responsible is entitled to the means - i.e. the type and type made

Instruct the deletion - selection discretion (cf. again Kamann/Braun loc. cit. para. 36, according to which

to the destruction of codes or other decryption devices without the

Elimination of the data itself is referenced; cf. in this sense also Herbst in Kühlung/Buchner

(editor), General Data Protection Regulation [2017] Art. 17 margin no. 38, according to which the impossibility

is stopped from perceiving the information previously embodied in the data to be deleted;

cf. also Nolte/Werkmeister in Gola (ed.), General Data Protection Regulation [2017], according to which under

Deletion of any kind of de-identification of stored personal data

understand is; cf. also Warter, Dako 2/2018, 39 [40], according to which the result of the

deletion action is decisive).

The removal of the personal reference ("anonymization") of personal data can

thus in principle a possible means of deletion within the meaning of Art. 4 Z 2 in conjunction with Art. 17 Para. 1 DSGVO

being. However, it must be ensured that neither the person responsible nor a

third party can restore a personal reference without disproportionate effort (cf. RIS

Justice RS0125838, according to which it is not sufficient to merely change the data organization in such a way

that "targeted access" to the data in question is excluded; cf. further this

Judgment of the ECJ of October 19, 2016, C-582/14, margin no. 45 f). Only if the person responsible

As a result, data is aggregated on one level so that individual events are no longer identifiable

are, the resulting database can be described as anonymous (i.e. without personal reference).

(cf. Opinion 5/2014 on anonymization techniques of the former Art. 29-

Data Protection Working Party, WP216, p. 10).

The Administrative Court has also - on the comparable legal situation according to the

DSG 2000 - pronounced that a "blackening" is regarded as a form of deletion

can be. By blurring out the name of the person concerned and everyone else

Data concerning his person will be complied with his request for deletion (cf. the

Knowledge of November 23, 2009, Zl. 2008/05/0079).

D.3 On the merits

In the present case, the respondent has the personal data of

Complainant partly destroyed (i.e. without "leaving behind" anonymized data), partly

"deleted" by removing the personal reference to the complainant.

If the complainant submits that the respondent is required to

to delete data immediately and not only in the next deletion period in March 2019

counter to him that due to the removal of the personal reference by the

Respondent to the request for deletion before the end of the procedure before the

Data protection authority iSv § 24 Abs. 6 DSG was fully complied with, so that no

personal data iSv Art. 2 Para. 1 DSGVO are no longer processed and that no

There is a right to deletion with regard to a volume of data without personal reference (cf. recital 26

GDPR).

The Respondent has the "anonymization process" with a statement of October 3rd

2018 and the supplementary statement of November 16, 2018 also understandable

set out, so that there are no concrete indications - and moreover on the part of the

Complainant were also not brought forward - that a personal reference still exists

or the restoration of the personal reference is possible without disproportionate effort:

From these statements - on which the findings of fact were based -

apparent that the complainant's personal data was created by a "dummy

Customers" have been replaced. In the next step, this "dummy customer" was matched with another

unassignable entry merged, which also makes the history of changes sustainable

can no longer be reconstructed. At the request of the data protection authority, the

Respondent proves that there is no longer any log data that can be assigned. the

Respondent has this through appropriate screenshots - the complainant

were transmitted - proven.

The fact brought up by the complainant that "the data for a

"Could be de-anonymised" at a later point in time cannot change that. One

Deletion occurs when the processing and use of the personal data

of a data subject - as in the present case - is no longer possible. that too

at any point in time a reconstruction (e.g. using new technical

Aids) proves to be possible, does not make the "deletion by rendering it unrecognizable".

insufficient. A complete irreversibility is therefore - regardless of the means used for

Deletion - not necessary (cf. again the decision of the DSK of September 26, 2008 loc.

see also Kamann/Braun loc.cit. margin no. 33 mwN and Haidinger in Knyrim (ed.), DatKomm [2018]

Art. 17 margin no. 63).

The complainant is to be followed to the effect that there is a primacy of deletion, provided that

the relevant requirements of Art. 17 GDPR are met. This results from § 4 para.

2 DSG, according to which the processing of personal data is subsidiary - if data from

economic or technical reasons cannot be deleted immediately - up to

is to be restricted to the point in time at which deletion can take place.

However, the complainant fails to recognize that the removal of the personal reference - as explained

– already corresponds to deletion and none with regard to the specific means of deletion

The person concerned has a right to choose.

D.4 To assert the right to restriction

If the Complainant submits by statement of October 25, 2018 that the

originally alleged complaint regarding violation of the right to erasure and

restriction will continue to be maintained, he fails to recognize that with his submission of July 27th

2018 (as well as in the request of July 2, 2018 to the respondent)

expressly only a violation of the right to erasure and not also the right to

restriction claimed. A potential violation in the right to restriction would be

therefore to be treated separately.

D.5 Result

Since the Respondent before the conclusion of the present proceedings all

personal data of the complainant in their system either destroyed or

has rendered unrecognizable, she fully complies with the complainant's request for deletion

met.

The appeal was therefore dismissed accordingly.□