

GZ: 2020-0.219.620 from April 24, 2020 (case number: DSB-D123.539)□

[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□

Data Protection Authority decides on Paul A****'s privacy complaint□

(complainant) of September 29, 2018 against N*** GmbH (respondent)□

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

- The complaint is dismissed as unsubstantiated.□

Legal basis: Art. 4 Z 8 to Z 10, Art. 15, Art. 51 Para. 1, Art. 57 Para. 1 lit. f, Art. 58 Para. 2□

lit. c and Art. 77 Para. 1 of Regulation (EU) 2016/679 (General Data Protection Regulation, im□

hereinafter: GDPR), OJ No. L 119 of 04/05/2016 p. 1; Sections 18 (1) and 24 (1) and□

Paragraph 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. In his submission of September 29, 2018, the complainant brought to the□

Data Protection Authority□

essentially, the Respondent had to be□

Request for information from July 29, 2018 [Editor's note: in the original as a result of a□

obvious editorial oversight "2019"] with letters dated August 26, 2018 and□

10 September 2018 answered poorly. There are 5 files (collections at□

glasses orders)□

(Data on the visual impairment of the□

Complainant) that the Respondent processes via the Complainant, □

not been informed. □

as well as health data □

2. The Respondent replied with a statement dated October 29, 2018 □

in summary, she misinterpreted the complainant's request and only □

related to data transfers to an insurance carrier. The complete information □

has now been made up for with a letter dated October 25, 2018 and is the □

Opinion to the data protection authority. □

3. The Complainant also replicated the Respondent's statement □

Letter dated November 29, 2018, information from the Respondent dated October 25 □

2018 is still deficient and incomplete. The complainant has □

Letter dated November 6, 2018 sent to the Respondent with additional questions, □

which were answered by letter dated November 20, 2018. After inspection □

of the documents, the complainant found that the respondent □

carry out data processing on his person, which was initially kept secret □

be. The complainant did not consent to this either. □

4. The DPA informed the complainant by letter dated February 8, 2019 □

with that - unless he justifies why the alleged violation of rights as before □

exist - the procedure according to § 24 para. 6 DSG will be discontinued because of his □

Statement shows that the information provided by the Respondent by the □

answer to his supplementary questions has now been completely made up for. □

5. The complainant informed by letter dated February 17, 2019 that he had the □

Respondent additionally requested by e-mail of December 30, 2018, him regarding □

of data processing for marketing purposes, which data about his person □

passed on to the marketing company B*** GmbH. his consent to this □

was not given and the complainant also denied an alleged interest of the □

Respondent to this disclosure. The request was from the Respondent,□

despite urgency, remained unanswered.□

B. Subject of Complaint□

Based on the complainant's submissions initiating the proceedings, it follows that□

The subject of the complaint is whether the respondent is the complainant□

violated his right to information by providing incomplete information.□

On the other hand, the questions are whether the complainant consented to data processing□

is given and whether there is legal permission for the transfer of the data of the□

Complainant by the Respondent to the marketing company B***□

GmbH is not and is not the subject of this complaints procedure□

asserted in a separate complaint.□

C. Findings of Facts□

On July 29, 2018, the complainant requested information from the respondent□

his personal data.□

The Respondent replied to the Appellant by letter dated 26 August□

2018 as follows:□

[Editor's note: The original as a graphic file (facsimile of a printout)□

The letter reproduced cannot be pseudonymised with reasonable effort; it□

contains a list of data categories that are used for the purpose of providing an agreed□

insurance benefits were passed on.]□

The Respondent also replied to the Complainant again by letter□

dated September 10, 2018 as follows:□

[Editor's note: The original as a graphic file (facsimile of a printout)□

The letter reproduced cannot be pseudonymised with reasonable effort; it□

contains a communication from the Respondent without a data protection context□

With the exception of an indication that information has already been provided.]□

The complainant then lodged a complaint with the data protection authority on September 29, 2018□

Complaint about insufficient information.□

The Respondent granted the Complainant in the course of the proceedings before the□

Data protection authority in a letter dated October 25, 2018 the following information:□

[Editor's note: The original as a graphic file (facsimile of a printout)□

The letter reproduced cannot be pseudonymised with reasonable effort; it□

contains information in accordance with Art. 15 GDPR, in which in particular the personal□

Data of the complainant, in the data categories "customer data", "order data" and□

"Health data" are subdivided, reproduced in detail.]□

The complainant continued to consider the information provided by the respondent to be inadequate□

and submitted the following to the Respondent in an email dated November 6, 2018□

Supplementary questions:□

[Editor's note: The original as a graphic file (facsimile of a printout)□

The letter reproduced cannot be pseudonymised with reasonable effort; it□

contains a request from the complainant regarding the information provided on October 25, 2018,□

in particular why their data is processed for marketing purposes without consent□

which specific processors process his data and a request for□

more detailed justification of the storage period.]□

The Respondent replied to the Complainant's supplementary questions□

Letter dated November 20, 2018 as follows:□

[Editor's note: The original as a graphic file (facsimile of a printout)□

The letter reproduced cannot be pseudonymised with reasonable effort; it□

contains the Respondent's explanations regarding the Complainant's request dated□

November 6, 2018, in particular those claimed by the Respondent□

named processor. The following is just that passage of text□

reproduced, which refers to B*** GmbH.]□

"[...]□

With the implementation of marketing campaigns and advertising measures, we have within the framework□

an order processing according to Art. 28 DS-GVO the company□

B*** Ltd□

T*** street 7□

1**0 Vienna□

instructed. In this regard, those with previous post are already duly□

disclosed customer data and order data processed. The health data will□

not passed on. B*** GmbH processes the data provided strictly□

bound by instructions and exclusively for the purposes of N*** GmbH.□

[...]"□

The complainant turned□

Respondent. This letter is not available to the data protection authority.□

then with further questions to the□

The Respondent replied to the Complainant by letter dated□

December 17, 2018 as follows:□

[Editor's note: The original as a graphic file (facsimile of a printout)□

The letter reproduced cannot be pseudonymised with reasonable effort; it□

contains further explanations by the Respondent to the information already provided and the□

further inquiry by the complainant.]□

The complainant then contacted again by email dated December 30, 2018□

the Respondent and requested additional information about which of his data□

were passed on to the processor B*** GmbH and when this was passed on□

took place.□

The Respondent did not reply to this letter.□

Evidence: The findings are based on the□

matching submissions and the communications submitted by the parties.□

insofar□

D. In legal terms it follows that:□

According to Art. 15 Para. 1 GDPR, the person concerned has the right to be informed by the person responsible□

to request confirmation as to whether personal data concerning you□

are processed; if this is the case, she has a right to information about this□

personal data and the information pursuant to Article 15 (1) lit. a to lit. h□

GDPR.□

As a result, it must therefore be examined whether the Respondent gave the Complainant a□

provided incomplete information:□

As stated, the complainant was in any case informed by letter dated October 25, 2018□

informed that personal data about him will be processed, thus the requirement□

the basic confirmation as to whether personal data is being processed,□

according to Art. 15 Para. 1 1st sentence GDPR is fulfilled.□

is□

to state that these – like□

With regard to the further information pursuant to Article 15 Paragraph 1 lit. a and lit. b as well as lit. d bis□

lit. g GDPR□

determined – by the□

Respondent have been granted and the data protection authority here no violation in□

right to information. Information in accordance with Article 15 (1) (h) GDPR□

are not relevant in the present case and was therefore a defective□

Information was not claimed by the complainant either.□

It follows from the complainant's submissions that only the question remains open□

is whether it is also necessary to provide information about which data and when from the respondent to the□

Contract processor "B*** GmbH" were passed on.□

To clarify this question, the following provisions of the GDPR are relevant:□

Art. 15 para. 1 lit c GDPR states that the data subject has a right to information□

has about the recipients or categories of recipients to whom the□

personal data have been disclosed or will be disclosed,□

especially for recipients in third countries or international organizations.□

Art. 4 Z 9 1st sentence GDPR defines “recipient” as a natural or legal person,□

Authority, institution or other body to which personal data is disclosed,□

regardless of whether it is a third party or not.□

Art. 4 Z 10 GDPR defines "third party" as a natural or legal person, authority,□

Institution or other body, other than the data subject, the person responsible, the□

processors and the persons who work under the direct responsibility of the□

The person responsible or the processor is authorized to process the personal data□

process.□

Art. 4 Z 8 GDPR defines "processor" as a natural or legal person,□

Authority, institution or other body that processes personal data on behalf of the□

processed by responsible persons.□

A synopsis of these provisions shows that a processor□

not to be regarded as a third party, but independently of this as a recipient within the meaning of Art. 4 Z 9 DSGVO□

is to be evaluated, since in the course of the order processing the order processor by the□

responsible personal data are disclosed or made available.□

The qualification of the processor as a recipient subsequently means that□

the person responsible in accordance with Article 15 (1) (c) GDPR of the data subject□

must provide information.□

This happened□

Respondent as responsible with letter dated November 20, 2018.□

in the present proceedings – how□

determined – by the

On the question of whether the data subject is also to be informed of the data that is sent to the recipients were disclosed, the Federal Administrative Court has

(BVwG) already

stated that a data subject has such a right to information about the specific

has the data transmitted to the recipient (cf. the finding of the BVwG of 09.12.2019,

GZ: W214 2221970-1).

For the present proceedings, this means that the Respondent

Complainant therefore also has to disclose the specific personal data,

which you have disclosed to your processor "B*** GmbH".

As stated, the Respondent informed the Appellant by letter dated

November 20, 2018 informed that in the course of this order processing

disclosed customer data and order data of the complainant are processed.

In addition, she informed the complainant that she also processed

Complainant's health data not disclosed to their processor

became.

In the letter dated October 25, 2018, the Respondent listed the Appellant

already - as noted - the specific data that they under the categories

"Customer data", "Order data" and "Health data" processed.

It is therefore sufficiently comprehensible for the complainant which of his

personal data was and is disclosed to the processor "B*** GmbH".

for the data protection authority, therefore, no violation of the complainant in

right to information.

Ultimately, the question arises as to whether the Respondent also agrees with the Appellant

to provide information as to when the complainant's data will be sent to the processor

were disclosed.

For such an obligation, i.e. the provision of a kind of protocol□

Transmission times, however, are found neither in Art. 15 Para. 1 lit. c GDPR, nor in the□

other provisions of Art. 15 GDPR corresponding indications and has the□

Complainants therefore not entitled to this information.□

Furthermore, it is not clear to what extent this information serves the purpose of the□

right of access, which consists in becoming aware of the processing□

and to be able to check their legality (cf. recital 63 GDPR).□

As a result, the Respondent gave the Appellant a full□

information desk□

there is no violation of□

complainant in his right to information.□

within the meaning of Art. 15 GDPR and□

It was therefore to be decided accordingly.□