

[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 Richard A***'s privacy complaint□

(complainant) of June 26, 2018 against N*** Personaldienstleistungen GmbH□

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

- The appeal is dismissed.□

Legal basis: Article 17 paragraph 3 letter e, Article 57 paragraph 1 letter f and Article 77 paragraph 1 of the□

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

1; Section 24 of the Data Protection Act – DSG, Federal Law Gazette I No. 165/1999 as amended; §§ 17 para. 1 no. 1, 26□

Para. 1 and 29 para. 1 of the Federal Act on Equal Treatment□

(Equal Treatment Act - GIBG), Federal Law Gazette I No. 66/2004 as amended.□

REASON□

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

1. With a submission dated June 26, 2018, the complainant alleged a violation in□

Right to erasure and submitted that he requested erasure on May 31, 2018 via email□

his personal data from the Respondent's applicant database□

have requested. However, by letter dated June 19, 2018, the Respondent□

informed that it will not comply with this request for deletion. Although will□

The Respondent's application in question no longer applies to advertised ones□

Positions of the Respondent are taken into consideration, but there is one□

statutory storage obligation according to the Equal Treatment Act of six

months plus one month for the potential legal action. The input is the dem

Complaint procedure before the data protection authority previous correspondence

between the complainant and the respondent.

2. The Respondent submitted a statement dated July 16, 2018

summarized that the complainant on May 17, 2018 and on May 11

June 2018 via the "hr-****" applicant database. Reason for the – except for

Other - permissible storage of the data would be the Equal Treatment Act. be it

required, the application documents for at least six months

to keep, so that the respondent in case of any

Claim with reference to those provided with the application

can prove data freely.

3. The complainant prevailed within the framework of the party hearing granted to him

Letter from the data protection authority of 20 July 2018 no longer commented

delivered.

B. Subject of Complaint

Based on the submissions of the appellant, it follows that

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

thereby violated the right to erasure by responding to the request for erasure dated 31

May 2018 did not correspond.

C. Findings of Facts

1. The complainant contacted the on May 17, 2018 and June 11, 2018

Respondent advertised, which is why the personal data of

complainant is stored in the applicant database of the respondent

became.

Evidence assessment: The statements made are based on the insofar

undisputed submissions of the Respondent of July 16, 2018.□

2. On August 31, 2018, the complainant requested the deletion of his data□

the Respondent's applicant database. By letter dated June 19, 2018□

the Respondent with the fact that the application is not granted, the□

However, applicant data will no longer be used for advertised positions. the□

Respondent also informed the complainant that the applicant data□

six months plus one month for potential litigation, total accordingly□

seven months after receipt of the application will be deleted. The complainant□

was also informed that the applicant data due to a potential□

Procedure according to the Equal Treatment Act - at least for the time being - still saved□

Need to become.□

Evidence assessment: The findings made are based on the input of the□

Complainant dated June 26, 2018 and the complaints procedure before the□

DPA previous correspondence between complainant and□

Respondent attached to the submission.□

D. In legal terms it follows that:□

D.1 Applicable legislation□

Art. 17 GDPR reads including the heading:□

Right to Erasure ("Right to be Forgotten")□

Article 17□

(1) The data subject has the right to demand that the person responsible□

personal data relating to them will be deleted immediately, and□

The person responsible is obliged to delete personal data immediately if□

one of the following reasons applies:□

a) The personal data are relevant for the purposes for which they were collected or referred to□

processed in any other way is no longer necessary.□

b) The data subject withdraws their consent on which the processing is based ☐

pursuant to Article 6(1)(a) or Article 9(2)(a), ☐

and there is no other legal basis for the processing. ☐

c) The data subject objects to the ☐

Processing and there are no overriding legitimate reasons for the ☐

processing, or the data subject submits pursuant to Article 21(2). ☐

object to the processing. ☐

d) ☐

The personal data have been unlawfully processed. ☐

e) The deletion of the personal data is necessary to fulfill a legal obligation ☐

Obligation under Union or Member State law ☐

required to which the controller is subject. ☐

f) The personal data was collected in relation to the services offered by ☐

Information Society collected in accordance with Article 8(1). ☐

(2) Has the person responsible made the personal data public and is he ☐

obliged to delete them in accordance with paragraph 1, he shall take into account the ☐

measures appropriate to the available technology and implementation costs, ☐

also ☐

those responsible for data processing who ☐

process personal data, to inform that a data subject ☐

Person from them the deletion of all links to this personal data or from ☐

has requested copies or replications of this personal data. ☐

of a technical nature, to ☐

(3) Paragraphs 1 and 2 do not apply if processing is necessary ☐

a) ☐

b) ☐

to exercise the right to freedom of expression and information;□

to fulfill a legal obligation that requires processing under the law□

of the Union or the Member States to which the person responsible is subject requires,□

or to perform a task that is in the public interest or in□

Exercise of official authority that has been transferred to the person responsible;□

c) for reasons of public interest in the field of public health□

in accordance with Article 9 paragraph 2 letters h and i and Article 9 paragraph 3;□

d)□

interest□

in public□

for□

lying archival purposes, scientific or□

historical research purposes or for statistical purposes in accordance with Article 89□

Paragraph 1, insofar as the right referred to in paragraph 1 is likely to be realized□

renders impossible or seriously impairs the objectives of this processing, or□

e)□

to assert, exercise or defend legal claims.□

§ 17 Para. 1 Z 1 GIBG reads including the heading:□

Equal treatment in connection with an employment relationship□

§ 17. (1) Due to ethnicity, religion or belief,□

of age or sexual orientation□

in connection with a□

Employment relationship no one is directly or indirectly discriminated against, in particular□

not□

when establishing the employment relationship,□

1.□

Section 26 para. 1 GIBG reads, including the heading, in extracts:□

Legal consequences of violating the principle of equal treatment□

§ 26. (1) If the employment relationship is due to violation of the equal treatment principle□

of § 17 Para. 1 Z 1 has not been justified, the employer is vis-à-vis□

the job applicant to compensate for the financial loss and to a□

Compensation for the personal injury suffered. [...]□

Section 29 (1) GIBG reads including the heading:□

Time Limits for Making Claims□

Section 29. (1) Claims pursuant to Section 26 (1) and (5) shall be brought before a court within six months□

to assert. The period for asserting the claims according to § 26 paragraphs 1 and 5□

starts with the rejection of the application or promotion. Claims according to § 26□

Paragraph 11 must be asserted in court within one year. For claims after□

§ 26 para. 2, 3, 4, 6, 8, 9 and 10 applies the three-year limitation period according to § 1486 des□

General Civil Code.□

D. 2 Exceptions to the Right to Erasure□

The right to erasure pursuant to Art. 17 Para. 1 and 2 GDPR then does not apply□

Consider, if a processing in the Art. 17 Para. 3 lit a to e DSGVO exhaustive□

listed cases is required.□

In the present case, the facts under Art. 17 Para. 3 lit e GDPR come into consideration,□

i.e. processing for the establishment, exercise or defense of□

legal claims may be required.□

It should be noted that the "defense of legal claims" - not□

contradicting the wording - also means "defense against legal claims".□

In terms of time, this regulation applies in any case if the assertion□

the exercise or defense of (or against) legal claims is already taking place or□

sure to come. The merely abstract possibility of legal disputes is□

not sufficient (cf. Herbst in Kühling/Buchner, GDPR comment [2017] Art. 17 para 83).

The Constitutional Court has in connection with a request for deletion against a person responsible for the public sector also pronounced that the just a general note that "corresponding proceedings are still pending", not is sufficient. Rather, it must be specifically explained in each individual case why

At the end of a procedure, there is a "need to keep the documents concerning the private life" of the person concerned. It must also be stated which specific proceedings are still pending, in connection with the documents of the proceedings that have already been completed (cf. the finding of

Constitutional Court of December 12, 2017, E 3249/2016-11; cf. also the Decision of the data protection authority of April 25, 2018, DSB-D122.776/0007-DSB/2018).

Transferred to a request for deletion against a person responsible for the private sector (as present) these statements mean that the general reference to potentially future, not yet pending or imminent (court) procedure is not sufficient to avoid having to comply with the deletion request.

Rather, the person responsible must explain which concrete future procedures on what basis could be brought and to what extent by such procedure at the time of the decision of the data protection authority a necessity for the further storage of the personal data is justified.

D. 3 In substance

In the present case, the Respondent refused – at least for the time being immediate deletion of the complainant's applicant data and conducted a possible

Assertion of a claim for compensation according to § 26 Para. 1 GIBG.

The result of this statement by the Respondent cannot be contradicted:

According to § 29 paragraph 1 GIBG, a claim for compensation according to § 26 paragraph 1 GIBG within

be asserted within a period of six months. The Respondent□

thus does not generally refer to a potentially future procedure, but□

designates a concrete claim that is made against you within a concrete□

period could be asserted.□

Applicant data can of course serve as a basis for the decision as to whether a□

employment relationship is established with a certain applicant. Against this background□

is iSv Art. 17 Para. 3 lit e DSGVO the further storage of applicant data□

necessary to defend against a claim according to § 26 Abs. 1 GIBG□

or to be able to justify why within the framework of a procedure according to the GIBG□

there would be no discrimination within the meaning of § 17 Para. 1 Z 1 GIBG.□

Furthermore, the Respondent named a specific point in time from when□

applicant data will be deleted. It is thus clear to the complainant that□

when his applicant data will be deleted. In addition, declared himself□

the Respondent is also willing to send the Appellant's applicant data to□

to be deleted as soon as possible, i.e. after expiry of the period of § 29 Para. 1 GIBG□

(actually seven months after receipt of the application, thus calculated from the 17th□

May 2018 and June 11, 2018).□

The additionally calculated month to the six-month period according to § 29 Abs. 1 GIBG,□

to allow for a potential lawsuit, seven months off□

Application receipt is reasonable and not disproportionately long. the□

Respondent also agreed to the subject□

Applicant data for the purpose of defending against a claim for compensation under the GIBG□

to keep and no longer use them to fill any positions.□

D. 4 result□

In the present case, the six-month period of Section 29 (1) GIBG (or seven□

months from receipt of application) at the time of the decision of the□

Data Protection Authority not yet expired.□

Against this background, the requirements of Art. 17 Para. 3 lit e GDPR are met,□

which is why the result is that a claim for deletion must be denied.□

Therefore, the decision had to be made accordingly.□

Otherwise, the complainant has the right to information under Art. 15 GDPR□

also a tool available to check whether the Respondent after□

Expiry of the period, personal data of the complainant (specifically:□

Applicant data) stores.□