

GZ: DSB-D123.942/0004-DSB/2019 from 27.8.2019□

[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. Fritz□

A*** (appellant) of December 22, 2018 against the N***social insurance□

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

- The appeal is dismissed.□

Legal basis: § 1 paragraph 1, § 24 paragraph 2 Data Protection Act - DSG, Federal Law Gazette 165/1999□

idgF; Art. 4 Z 1, Art. 6 Para. 1 lit. c General Data Protection Regulation – GDPR, OJ L 119□

from May 4th, 2016, p.1.□

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

REASON□

1. In the filing of the proceedings dated December 19, 2018, the□

Complainant stated that he was between December 11, 2018 and January 8, 2019□

Patient in the rehabilitation center Bad N ***, for which the respondent as□

Responsible to see had been patient. When greeted by the□

The head of administration was made aware of the fact that□

Sick rooms with electronic door locks (locking by means of a door chip) and□

be equipped with motion detectors. This can be used to determine whether a□

patient is in his room. In addition, the complainant suspected it□

can a movement profile be created with the help of the data and be this for the purposes□

not necessary for the treatment. This contradicts many principles of

data processing.

2. Submitted after improvement of the complaint with submission of February 22, 2019

the data protection authority with completion GZ: D123.942/0001-DSB/2019 of March 7, 2019

a request for comments to the designated Respondent.

3. With submissions dated April 10 and 16, 2019, the Respondent stated that she

run the rehabilitation center in Bad N*** - specialized in cardiac

Circulatory diseases – where the complainant in the period from December 11, 2018

was inpatient until January 8, 2019. It is also true that the rooms with

Motion detectors in conjunction with electronic door locks

would be, however, movement profiles of patients could not be created with it. the

Plant process through the knowledge of the staff who occupies a room with the

electronic door lock, where a chip can be assigned to a person, as well as

a motion detector in every patient room, personal data. Out

However, no movement profile could be created from this data, but supplied it

only the largely reliable information as to whether a patient is in a room

located. This is covered by different legal bases. So be these

Contrary to the complainant's statements, the data is not

to qualify health-related data. Next would be vital

Interests of data subjects are safeguarded and this is also the case from

Justification for compliance with legal obligations towards the patient

covered, which arises from the relevant rules of the federal and state laws for

Hospitals and sanatoriums result. It is already - proven measures - to do so

come that patients have acute emergencies only because of the subject of the complaint

systems would have survived. Furthermore, in emergencies, it allows a faster and more targeted

Evacuation of the building and ultimately make it possible to check whether patients

at 10:30 p.m. in their rooms after the time specified in the institutional regulations□

would be. This is necessary to achieve the purpose of rehabilitation. To check all□

alternatively, only one review could be held of these points. In synopsis□

of these points, it follows that the present data processing is not only that□

the mildest means, but also the only reliable measure to achieve the purpose□

may be.□

4. With the completion of GZ: DSB-D123.942/0003-DSB/2019 of May 6, 2019, the□

Data Protection Authority grants the complainant the right to be heard.□

5. With a submission dated May 9, 2019, the complainant replied to the statements of the□

Respondent that their justifications of vital interests□

of the data subject would not be relevant and that most patients are not□

would require constant monitoring. That of the Respondent□

Other arguments put forward would also not be persuasive, since the patients three times□

daily at meals, therapy units in between and during medical visits□

would be checked anyway. It is up to the Respondent's opinion□

deduce that the only purpose for which the facility actually exists is the□

Checking attendance after 10:30 p.m. in the sickroom.□

B. Subject of Complaint□

The subject of the complaint is the question of whether the electronic attendance check by means of□

Door lock and motion detector the complainant in the right to secrecy□

has hurt.□

C. Findings of Facts□

The complainant was a patient from December 11, 2018 to January 8, 2019□

in the rehabilitation center Bad N***. The complainant was in a single room□

accommodated. The Bad N*** rehabilitation center focuses on cardiac and□

circulatory diseases and is located in a large green area□

patients can move freely.□

Since the facility was modernized in 2016, all rooms have been fitted with motion detectors□

and electronic door locks, which can be locked using a coded chip key□

are equipped. No movement profiles are created and no recordings□

collected via movement patterns.□

The purpose of the system is electronic room occupancy detection. From legitimate□

Employees of the Respondent can access this information if necessary□

will.□

Evidence assessment: Evidence of the undisputed facts was raised by the□

consistent and credible statements by the parties to the proceedings□

Proceedings before the data protection authority.□

D. In legal terms it follows that:□

The essence of the complaint is the question of whether the established facts (sufficient) of□

a justification is borne. It must be stated in advance that□

Subject of the proceedings by no means the basic admissibility of the electronic□

Room occupancy detection is, but only whether the complainant in the concrete□

individual case in which his right to secrecy was violated:□

The data protection authority takes the position in its case law that the□

Confidentiality obligation according to § 1 paragraph 1 DSG is not violated if according to § 4□

Para. 1 DSG standardized implementation provisions of the DSGVO and their□

justifications have been complied with. Accordingly, implementing standards of□

Art. 2 DSG to Art. 1 DSG according to a clear legal order as standards of□

DSGVO to see and for the assertion of the subjective violation of rights in□

Fundamental right to data protection according to § 1 DSG the standards of the DSGVO relevant (cf. e.g.□

DSB-D123.495/0007-DSB/2018 of February 5, 2019).□

The detected electronic room occupancy detection recorded without a doubt in the□

Period from December 11, 2018 to January 8, 2019 also the complainant. It was

not disputed by the Respondent that the collected data

Complainants could be assigned and that the data processing in their

Overall impact made it possible to determine whether the complainant in his

room.

The requirement of identifiability and traceability of the data is therefore met

(Art. 4 Z 1 DSGVO, § 1 Abs. 1 DSG) The argument that there are special categories

of data within the meaning of Art. 9 DSGVO processed, for which a general processing ban

exists cannot be upheld with regard to the objected data processing.

The complainant is to concede that by the respondent

mentioned justifications of the vital interests of the data subject

are not relevant here, because of the scope and quality of the

Data processing can only be concluded if there is a person in the hospital room

stops. It may well enable life-sustaining measures to be taken more quickly in individual cases,

if it is recognized that that person is in their room, but can

Respondent does not assume that the electronic

Room occupancy detection is required to protect vital interests of any event

to protect the person concerned.

However, it must be borne in mind that the rehabilitation provided to the complainant by the

Respondent was granted and the thwarting of the rehabilitation success

social security and civil law consequences. After

general principle that an insured person protects the interests of

social security institution and thus also that of the other insured persons in a reasonable way

way, if he does not want to lose his claims, he is more consistent

Jurisdiction obliges to carry out necessary medical treatment, which

would lead to a cure and restoration of his ability to work, provided that

treatment is not associated with unreasonable risks for him. a culpable,
i.e. an at least slightly negligent breach of the duty to tolerate or cooperate
of the insured person who has to undergo reasonable medical treatment
to the loss of the claim (see Supreme Court of June 28, 2011, GZ 10 ObS 58/11v).

The aim of the stay in special hospitals that serve rehabilitation is
due to a rehabilitation plan, the personal situation and individual
improve health problems or diseases of a patient or
at least to get. According to the case law of the Supreme Court, these measures are required
also the basic cooperation of the patient (cf. e.g. Supreme Court of May 10, 2016,
GZ 6 ObS 4/16k).

The culpable breach of the obligation to cooperate is the responsibility of the insurance carrier
claim and prove. The insurer generally also applies

Burden of assertion and proof that the requirements for the award of a

Benefits are no longer given if (as soon as) the insured person becomes one of them
subject to reasonable treatment (see Supreme Court of June 28, 2011).

Applied to the present case, this means that the complainant
is obliged to contribute to the improvement of his state of health. This includes
compliance with the prescribed night's rest. Failure to comply with
prescribed measures would result in the complainant losing claims

or these are reclaimed by the Respondent, whereby the burden of proof
for the non-occurrence of the treatment success and consequently for the reduction or
Reclaim of services meets the Respondent.

The data protection authority represents in settled case law that the data processing
must be justified in scope and intensity by the purpose pursued (cf.
GZ: DSB-D123.032/0003-DSB/2018 from 12.11.2018).

As already shown, the Respondent has through the electronic

Room occupancy detection the possibility to collect whether the complainant is in

is in his room and is this information evaluated on a case-by-case basis –

further information cannot be determined as a result. In addition, it is the

Respondent throughout the day in the administration of meals and

Therapy units is also possible without electronic room occupancy detection

to determine whereabouts.

The data protection authority therefore comes to the conclusion that the subject of the proceedings

Data processing is appropriate and proportionate to the mutual rights and

To uphold the obligations of the parties involved in the context of rehabilitation.

It had to be decided accordingly.