

[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□

The data protection authority decides on the data protection complaint of Friedrich A***□

(Appellant) of January 20, 2019 against N***-Versicherungsmakler GesmbH□

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

- The complaint is upheld and it is found that the□

Respondent gives the complainant the right to information□

has violated by after receipt of the request for information□

has deleted or destroyed personal data and thereafter□

gave negative information.□

Legal basis: Section 24 (1) and (5) of the Data Protection Act (DSG), Federal Law Gazette I□

No. 165/1999 as amended; Art. 5 para. 1 lit a, Art. 12 para. 3, Art. 15, Art. 55 para. 1 and Art. 77□

Para. 1 of Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR), OJ.□

No. L 119 of 04.05.2016, p. 1.□

REASON□

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

With a submission dated January 20, 2019, the complainant alleged an infringement in□

Right to information applies. In summary, he told the Respondent on□

September 27, 2018 granted power of attorney to take out car insurance. At the□

On January 2, 2019, he revoked this power of attorney in writing, and he also had the original□

been delivered. Nevertheless, the Respondent continued without power of attorney in the acting on behalf of the complainant. On January 17, 2019 he had information requested according to GDPR and DSG. He got the information letter the same day received from the Respondent, who was informed that all data had been deleted and no information could be given (negative information). However, this corresponds not the truth, since on January 10, 2019 without a power of attorney, another notice was given to the insurance company had been carried out. Since the Respondent in concluded contracts on behalf of the complainant, it must do so give records. Documents must also be submitted to the termination office give respondent. Furthermore, there are also commission claims Respondent to the car insurance company, need the Respondent the data.

In the statements of February 6, 7 and 20, 2019, the Respondent led summarized from that on January 17, 2019 the request for information in writing had been complied with. The complainant was given negative information, since all of the complainant's data and documents were already available on January 17, 2019 irrevocably deleted and destroyed. So you don't have any Evidence of the existence of these documents and cannot provide anything (e.g. erasure logs).

With a submission dated March 31, 2019, the complainant submitted what was granted to him Being heard by the parties and additionally stated that the Respondent in particular must therefore still have personal data stored by him, because it concerns the present contracts and associated data

There would be a retention period of 7 years. In addition, appropriate Erasure logs are kept.

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 information by not providing those personal data□

has disclosed data that it received at the time the request for information was received□

had processed.□

C. Findings of Facts□

1. The Appellant requested from the Respondent on January 17, 2019□

at 12:46 a.m. by e-mail regarding his personal data and information□

data copy.□

Evidence: Complainant's request for information dated January 17, 2019,□

Respondent's response to information dated January 17, 2019.□

2. Processed at the time of receipt or knowledge of the request for information□

the Respondent personal data (data and documents) about the□

complainant.□

Evidence: Additional statement by the Respondent dated February 20, 2019□

3. After knowledge of the request for information deleted or destroyed□

Respondent all relating to the complainant□

personal data.□

Evidence: Additional statement by the Respondent dated February 20, 2019□

4. After deletion and destruction of the personal data of the□

Complainant reimbursed the Respondent on the same day□

8:38 a.m., negative information sent to the complainant by e-mail.□

Evidence: Data protection complaint dated January 20, 2019; Response to the information□

Respondent of January 17, 2019; Opinion of the Respondent□

from February 06, 2019; Respondent's statement of February 7th□

2019; supplementary statement by the Respondent of February 20, 2019;□

Party hearing of the complainant from March 31, 2019□

Evidence assessment:□

The findings regarding the position of the request for information and their□

Response by the Respondent are based on the same wording□

Submissions of the Complainant of January 20, 2019 and the Respondent in□

their statements of 6, 7 and 20 February 2019 to the data protection authority and□

the documents accompanying the complaint.□

Regarding the determination of the deletion or destruction of the personal□

The complainant's data is in particular based on the conclusive and□

comprehensible arguments of the Respondent in their statements of 6., 7.□

and February 20, 2019.□

The Appellant submits that the Respondent still□

processes personal data about him, it must be countered that the□

Complainant himself states in the letter of March 31, 2019: "I take□

on that for this reason [Note of the SB: The complainant discusses that the□

Respondent acted on his behalf and him despite the withdrawal of the power of attorney□

almost caused damage] the data was simply deleted or claimed□

is that these have been deleted." In addition, it follows from a□

Retention obligation for contracts and related data not like the□

Complainant submits, compellingly, that relevant data is in fact not□

have been deleted. The complainant's assertion that the□

Respondent on the basis of the claims made by her on behalf of the complainant on□

10 January 2019 termination at the B***versicherung personal□

must have stored data contradicts the statements of the□

Respondent not, according to which until receipt of the request for information on□

January 17, 2019 still stored personal data of the complainant□

was. Regarding any commission payments and the associated storage

of the complainant's personal data, he did not provide any evidence.

Overall, the finding was to be made that the Respondent up to

Receipt or knowledge of the request for information personal data

processed by the complainant, but to his knowledge it was deleted or

had destroyed, as can be seen in particular from the supplementary opinion of

Respondent of February 20, 2019 states: "We have all the documents that

Person Friedrich A*** (SB's note: the complainant) destroyed on January 17, 2019

and therefore no documents and data have been processed or sent since January 17th, 2019

been processed or can still be processed or sent since January 17, 2019.

Again: Since January 17th, 2019 there is nothing in our company that reminds Mr

A*** remembered. period and end."

D. In legal terms it follows that:

I

General

According to Article 5 Paragraph 1 Letter a GDPR, personal data must be lawful

manner, in good faith and in a manner that is comprehensible to the data subject

manner are processed ("lawfulness, fair processing,

Transparency").

According to Selmayr, the principle of fair processing is about the

Ensuring "fair" processing, such as the English language version ("fairly")

clarified. This principle is a benchmark for taking the

Protection purpose of the DS-GVO (Art. 1 Para. 2) in the application of its regulations and

prohibits any unauthorized exercise of rights by the person responsible or the

processor to the detriment of the data subject. The principle requires

in particular that in the application of the law in certain processing situations

the "reasonable expectations" of the person concerned must be taken into account (Heberlein in

Ehmann/Selmayr [editors], General Data Protection Regulation² [2018], Art. 5, para. 9).

According to Art. 12 Para. 3 GDPR, the person responsible represents the data subject

Information on the measures taken upon request under Articles 15 to 22

immediately, but in any case within one month of receipt of the application

Disposal.

In accordance with Art. 15 Para. 1 GDPR, the data subject has the right from which

To request confirmation from those responsible as to whether they are concerned

personal data are processed; if this is the case, she has a right to

Information about this personal data and the following information [...].

In accordance with Art. 15 (3) GDPR, the person responsible provides a copy of the personal data

Data that are the subject of processing are available.

According to Haidinger, the direct legal consequence of a request for information is the duty of the

responsible for providing information. Due to the wording in Art. 15 para. 1

("processed") it can be concluded that the obligation to provide information

is triggered when the controller is currently processing data, but not when it is in

has processed data of the data subject in the past and this now

are deleted. The scope of the provision of information is therefore determined by the time of the

Application determined (Haidinger in Knyrim [ed.], DatKomm, [01.10.2018] Art 15

GDPR margin nos. 26 and 27).

According to recital 63, a data subject should have a right of access with regard to them

relevant personal data that has been collected and this

Quite easily and at reasonable intervals can perceive the

To be aware of the processing and to be able to verify its legality.

In addition, the right to information is necessary so that the data subject

can assert their rights to correction, deletion and blocking; furthermore that

Right to object to processing (cf. Ehmann in Ehmann/Selmayr [ed.],

General Data Protection Regulation² [2018], Art. 15, para. 1).

If the person responsible does not process any personal data (constellation of

"Negative certificates", also negative information), play the other parts of the regulation in

specific case no longer matters. A negative report is considered if either

no data on the data subject is processed or if existing,

(originally) personal data are irreversibly anonymized (cf. Ehmann in

Ehmann/Selmayr [editors], General Data Protection Regulation² [2018], Art. 15, para. 4 and

13).

II.

Concrete

It should be noted that the GDPR - in contrast to Section 26 (7) DSG 2000 as amended by Federal Law Gazette I

No. 83/2013 - no explicit prohibition of deletion of personal data

Knowledge of a request for information more postulated.

The Respondent's procedure after receipt of the request for information

of the complainant to delete his personal data (here is

It should be noted that deletion logs, especially in the case of regular automatic

Deletion should be used [see, inter alia, Thiele, yearbook data protection law

2018, 151], which was not alleged in the present case) and thereafter

However, giving negative information corresponds to the above statements

does not comply with the principle of fair processing and represents related thereto

constitutes a violation of the complainant's right to information (Article 15 in conjunction with Article 5

Paragraph 1 lit. a GDPR).

Although the person responsible has, he is currently processing, i.e. at the time of the

Receipt of the request for information, no personal data about the

Respondent to provide negative information, however, the Respondent in

the case at hand at the time the request for information was received□

processes and has personal data of the complainant□

exclusively only the disclosure of his personal data or data copy□

coveted.□

The complainant therefore expected this according to “reasonable expectations”.□

can have this personal data disclosed to him, and not with□

that the Respondent deletes his personal data and thereafter□

Information about not having any. The complainant only had one□

Request for information about his personal data made and not about□

(simultaneously) a request for deletion of the same. The Respondent is hers□

Obligation to provide information arising directly from the request for information - and the consequent obligation□

associated transparency obligation according to Art. 5 Para. 1 lit. a GDPR - therefore not□

legally complied with. As a result, it is no longer for the complainant□

possible to be able to check the lawfulness of the processing, which, however, u.a.□

The purpose of the right to information is (see recital 63 first sentence GDPR).□

The complainant is thus through the behavior of the respondent, that is,□

the issuance of negative information, although the Respondent at the time of□

Receipt of the request for information personal data of the complainant□

process, but had deleted them in response to the request for information, in his□

Right to information or data copy according to Art. 15 GDPR has been violated (cf□

regarding the violation of the right to erasure by an excessive□

Deletion of the decision of the data protection authority of December 5th, 2018, GZ DSB-□

D123.211/0004-DSB/2018).□

Accordingly, a decision had to be made according to the verdict.□