

GZ: 2020-0.083.190 from 21.2.2020□

[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 application of Dr. Alfons A*** (Applicant),□

represented by D*** & Partner Rechtsanwälte GmbH & Co KG, dated January 20, 2020, in□

any administrative penal proceedings against Dr. Elfriede A*** party position□

to grant and grant access to files as follows:□

- The application is rejected.□

Legal basis: §§ 17, 32 paragraph 1, 56 paragraph 2, 57 paragraph 1 Administrative Penal Act 1991 -□

VStG, Federal Law Gazette No. 52/1991 as amended; Article 82 (6) of Regulation (EU) 2016/679 (data protection□

General Regulation - GDPR), OJ No. L 119 of 4 May 2016, p. 1; § 29 Data Protection Act –□

DSG, Federal Law Gazette I No. 165/1999 as amended; Section 17 General Administrative Procedures Act 1991 –□

AVG, Federal Law Gazette No. 51/1991 as amended.□

REASON□

A. Submissions□

In his application, the applicant submits the following:□

from the□

26.1.2018□

"With notice□

the□

Data protection authority determined (amended by the decision of the BVwG of June 25th, 2019□

(GZ: W258 2187426-1/40E□

/ W 258 2188466-1/36E) that Dr. Elfriede A***□

(Respondent) the applicant, Dr. Alfons A*** (Appellant), in his□

violated the right to information.□

(GZ: DSB-D122.756/0005-DSB/2017)□

has□

Due to the final decision of the data protection authority, it can be assumed that the□

Data protection authority officially initiated administrative penal proceedings against Dr. Elfriede A***□

initiated. As the injured party, the applicant has a legal interest in the□

administrative criminal prosecution of Dr. Elfriede A***.□

The applicant therefore submits the□

Application,□

1. on being granted party status in any administrative penal proceedings□

against Mrs. Dr. Elfriede A*** and□

2. to inspect the files in this administrative criminal proceeding."□

B. In legal terms it follows that:□

The Administrative Court found□

in its finding of February 27, 2019,□

Ra 2017/10/0121, express□

clear it□

agree with the parties□

Administrative penal proceedings by virtue of express provisions of the VStG□

closed group of persons defined by law.□

These are the accused (cf. Section 32 (1) VStG), the private prosecutor (cf. Section 56□

Para. 2 VStG) and the private party (cf. Section 57 Para. 1 VStG). Furthermore, it follows from□

§ 17 VStG a party position of the accused different from the owner of a□

expiration of threatened object.□

The applicant will not be accused of administrative penal proceedings before the□

Data Protection Authority in connection with the above-mentioned preliminary proceedings.□

In any case, in the present case it is not a matter of offense of honour,□

thus the applicant is no longer qualified as a private prosecutor within the meaning of the VStG□

out. Moreover, this would not be a fact that the data protection authority should avoid□

had.□

Also, in the present case, the applicant cannot be accused by the (possible) accused□

different owners of an item threatened with decay.□

So that a person as a private party is a party to administrative penal proceedings□

can obtain is a prerequisite that the administrative penal authority after individual□

Administrative regulations in the penal decision also on those resulting from an administrative offence□

derived□

under private law□

Expectations□

to□

decide□

has.□

the□

the□

Provisions of Art. 83 GDPR and § 62 standardizing administrative offenses□

However, the DSG do not provide anything in this regard.□

For the above-mentioned reasons, the data protection authority is therefore prevented from third parties□

to grant party status to persons - beyond the cases provided for by law.□

Consequently, no inspection of files can be granted.□

It was therefore to be decided accordingly.□