

GZ: DSB-D122.829/0003-DSB/2018 from 6.6.2018□

[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 Mrs. Nora A\*\*\*□

(Appellant) of December 20, 2017 against the Vienna City Administration – MA 63□

(Hospital \*\*\*\* Vienna) (Respondent) for violation of the right to information in□

Consequence of incomplete information as follows:□

1. The complaint is upheld and it is found that the□

Respondent the complainant in their right to information□

hurt her by not telling her who was specifically on her medical record□

has accessed.□

2. The Respondent is instructed within a period of two weeks□

to provide the information.□

Legal basis: Sections 24 and 69 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999□

idgF; Art. 15, Art. 57 (1) lit. f, Art. 58 (2) lit. c and Art. 77 of the Regulation (EU)□

2016/679 (General Data Protection Regulation - GDPR), OJ No. L 119 p. 1.□

REASON□

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

1. The complainant, who works in the hospital \*\*\*\* Vienna, \*\*\*\* Institute, is,□

turned to a submission according to § 31 paragraph 1 DSG 2000 (Federal Law Gazette I No. 165/1999 as amended□

Federal Law Gazette I No. 83/2013) of December 20, 2017 to the data protection authority and led□

from the fact that the Respondent as a representative of the hospital \*\*\*\* Vienna no

full information or no information as to who specifically unauthorized

accessed their data in their electronic health record.

2. The data protection authority initiated based on the complainant's submission

Complaints procedure for GZ D122.829 and asked the respondent to do the same

Letter dated January 15, 2018 for comment. At the same time, due to a

Complaint by the complainant against the respondent because of a

alleged violation of the right to secrecy through the said accesses

Procedure according to § 31 paragraph 2 DSG 2000 initiated and GZ DSB-D122.831

logged.

3. The Respondent informed in a letter dated February 6, 2018 that a

specific provision of information about access to electronic documents

Medical history contradicts the provision of § 14 para. 4 DSG 2000 and the

information cannot therefore be given.

4. As part of the party hearing granted on February 13, 2018, the

Complainant submits that the subject of the complaint is information about her

In my opinion about abuse of office and violation of the duty of care by the

Employer "Municipality of Vienna, KAV, Department Hospital \*\*\*\* Vienna" handle. Further

Documents regarding violation of the duty of care could be provided.

B. Subject of Complaint

Based on the complainant's submissions, it follows that the subject of the complaint

the question is whether the Respondent thereby violated the Complainant's right to

(complete) information breached by the respondent to § 14 para. 4 DSG 2000

referred, according to which the use of log data for purposes other than the

Control of the admissibility of the use of the logged database, is allowed,

and therefore it was not allowed to be informed who specifically accessed the data of the

complainant has accessed.□

### C. Findings of Facts□

1. The complainant is in the hospital as a clerk of the Municipality of Vienna□

\*\*\*\* Vienna, \*\*\*\* institute, employed.□

2. The complainant requested on November 26, 2017 by email to the□

Data Controller of the Hospital \*\*\*\* to know who from the period□

09/2015 accessed their data:□

[Editor's note: The e-mail reproduced here in the original as a facsimile□

Correspondence cannot be exchanged for legal documentation purposes with reasonable effort□

be reproduced pseudonymised. In summary, the□

complainant, providing identification data (including name, e-mail address,□

personnel number and user IDs used) for information. On December 6, 2017, the□

Complainant asked for cooperation by an employee of the hospital \*\*\*\*□

and give her information at the same time. Specifically, a table was accessed in 2016□

and four accesses in 2017 to the applicant's patient records as apparent□

listed as "not plausible" and asked the complainant for her assessment. in the□

The complainant's reply email on the same day only referred to one of the accesses□

from 2017 (under the keyword "emergency medicine") as plausible.]□

3. By letter from the respondent dated February 5, 2018 to the GZ DSB-□

D122.831/0001-DSB/2018, he issued the following statement on access□

(emphasis added by data protection authority):□

"The data controller of the hospital \*\*\*\* accordingly□

Access logs evaluated, whereby implausible accesses by a person were determined□

became. According to the hospital \*\*\*\* internal processes, a□

Opinion obtained from the relevant hospital \*\*\*\* employee. the□

Evaluation of the Opinion revealed that these requests were not based on a□

Treatment or care relationship or any other legal

basis and were therefore inadmissible."

4. By decision of June 4, 2018, GZ DSB-D122.831/0003-DSB/2018, the

Complaint of an alleged violation of the right to confidentiality as a result

unauthorized access granted.

Evidence assessment: These findings are based on the submissions of the

Complainant of December 20, 2017 and the attachments there, as well as the

Statement of the Respondent of February 6, 2018. These are also based

Findings on the cited documents in the procedure for GZ DSB-D122.831.

D. In legal terms it follows that:

1. General:

In accordance with the legal situation applicable from May 25, 2018, this was previously in accordance with Section 31 (1).

DSG 2000, Federal Law Gazette I No. 165/1999 as amended by Federal Law Gazette I No. 83/2013, procedures as

Complaints procedure according to § 24 DSG, Federal Law Gazette I No. 165/1999 as amended, according to the provisions

of the DSG and the GDPR (cf. Section 69 (4) DSG).

2. Regarding the competence of the data protection authority:

According to Art. 57 Para. 1 lit. f GDPR, each supervisory authority in its sovereign territory must

deal with complaints from a data subject.

In accordance with Section 24 (1) DSG, every data subject has the right to lodge a complaint with the

Data Protection Authority when it considers that the processing is relevant to you

personal data against the GDPR or against § 1 or Article 2 1st main part

violates.

The complainant complains of a violation of her right to information

personal data concerning them.

The data protection authority is therefore responsible for the decision.

3. Timeliness:

According to Section 24 (4) DSG, the right to have a complaint dealt with expires if the ☐

They do not intervene within one year after becoming aware of the complainant ☐

event, but at the latest within three years after the event is claimed ☐

Measures has taken place. ☐

The complainant has the information from December 6, 2017 for the first time ☐

gained knowledge of unauthorized access. Even if one of the complainant ☐

would assume knowledge of the adverse event as of November 26, 2017, ☐

would be the application (complaint according to § 31 para. 2 DSG 2000) from December 20, 2017 ☐

the data protection authority in good time. ☐

4. In the matter: ☐

Regarding point 1: ☐

Art. 15 GDPR reads: ☐

"Right of access of the data subject ☐

(1) The data subject has the right to receive confirmation from the person responsible ☐

to request whether personal data concerning them is being processed; is ☐

If this is the case, she has a right to information about this personal data and ☐

to the following information: ☐

a) the processing purposes; ☐

b) the categories of personal data being processed; ☐

c) the recipients or categories of recipients to whom the ☐

personal data have been disclosed or will be disclosed, ☐

in particular for recipients in third countries or international organizations; ☐

d) if possible, the planned duration for which the personal data will be stored ☐

or, if that is not possible, the criteria used to determine that duration; ☐

e) the existence of a right to rectification or erasure of data concerning them ☐

personal data or restriction of processing by the ☐

controller or a right to object to this processing;□

f) the existence of a right of appeal to a supervisory authority;□

g) if the personal data are not collected from the data subject,□

all available information about the origin of the data;□

h) the existence of automated decision-making including profiling pursuant to□

Article 22(1) and (4) and – at least in these cases – meaningful information□

about the logic involved, as well as the scope and intended impact of a□

such processing for the data subject.□

(2) If personal data is sent to a third country or to an international□

Organization transmits, the data subject has the right about the appropriate□

Guarantees to be informed in accordance with Article 46 in connection with the transfer.□

(3) The person responsible shall provide a copy of the personal data that is the subject of the□

processing are available. For all further copies made by the data subject□

requested, the person responsible can charge an appropriate fee on the basis of□

require administration costs. If the data subject submits the application electronically,□

to make the information available in a commonly used electronic format, provided that□

she says nothing else.□

(4) The right to obtain a copy referred to in paragraph 1b shall not affect the rights and freedoms□

not affect other people.”□

Article 4 Z 2 GDPR reads:□

"Processing" means any operation carried out with or without the aid of automated procedures□

or any such series of operations involving personal data such as that□

Collecting, capturing, organizing, arranging, storing, adapting or□

Modification, reading, querying, use, disclosure by□

transmission, distribution or any other form of provision, comparison or□

linking, restriction, deletion or destruction;□

§ 14 para. 4 DSG 2000 read:□

"Log and documentation data may not be used for purposes associated with□

their purpose of investigation - that is to check the admissibility of the use of the□

logged or documented database - are incompatible. is incompatible□

in particular the further use for the purpose of checking those affected, their data□

are contained in the logged database, or for the purpose of checking them□

Persons who have accessed the logged database from another□

Reason than that of checking their access authorization, unless it is the□

Use for the purpose of preventing or prosecuting a crime under Section 278a□

StGB (criminal organization) or a crime punishable by imprisonment whose□

exceeds a maximum of five years."□

In a letter dated November 26, the complainant requested information as to who□

September 2015 to date (November 26, 2017) has accessed their data.□

Art. 15 GDPR does not provide for any special form for the request for information.□

In this case, the complainant requested information in writing by e-mail and□

Response can also be sent via e-mail if requested.□

For the assessment of whether there is a request for information under data protection law, this is□

To examine desire for its content, whereby that standard is to be applied, which also applies to□

Unilateral declarations of intent under private law apply (wording and understanding of the declaration□

from an objective point of view; , as they the recipient according to their wording and business purpose□

could understand when viewed objectively', OGH EvBl 1974/185 [termination]; cf□

the decision of the Federal Administrative Court of April 17, 2015, GZ W214 2010977-1).□

In her request for information pursuant to Art. 15 GDPR, the complainant is entitled to□

e-mail dated November 26, 2017 unmistakably stated that□

they only ask for information made by other employees of the respondent□

access to their health data (medical history).□

For the requested information on internal access:□

According to the decision of the Federal Administrative Court on GZ W214 2117640-1 of July 11th□

2017 on the question of whether log data is to be disclosed under Section 14 DSG 2000□

Queries from employees of the person responsible, which are within the original□

Responsibilities move, not the obligation to provide information, as long as they do not transmit□  
represent.□

This case law can be transferred to the new legal situation.□

According to Art. 15 Para. 1 lit. c GDPR, recipients are to whom data is disclosed□  
have been to provide information.□

According to Art. 4 Z 9 GDPR, "recipient" is 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 are under the direct responsibility of the□

Controller or the processor are authorized to process the personal data□  
to process.□

As the Respondent himself admitted in the proceedings regarding GZ DSB-D122.831,□  
the mentioned accesses were inadmissible because there was no legal justification for it.□

However, it is clear that these accesses were made by a "third party", because the□

Inquiring person "was not authorized to process the personal data."□

According to the case law of the Federal Administrative Court cited above,□

procedural access is therefore subject to the obligation to provide information under Art. 15 GDPR.□

Regarding point 2:□

The performance mandate is based on Article 58 (2) (c) GDPR in conjunction with Article 24 (5) DSG, whereby□  
in § 24 para. 5 leg. cit. standardized restriction to those responsible for the private□



Area not applied due to the direct precedence of Union law□

has to stay.□

To the extent that the complainant accused the respondent of abuse of official authority□

accuses, the data protection authority is also responsible for decisions in judicial criminal matters□

little as responsible for labor and social court disputes.□