

GZ: DSB-D123.737/0003-DSB/2019 from August 7th, 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 Ing. Richard□

A\*\*\* and Josepha A\*\*\* (appellant), both represented by T\*\*\* & P\*\*\*□

Lawyers, dated November 5th, 2018 (received on November 7th, 2018) against the city of N\*\*\*□

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

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

Respondent thereby entitles the complainants to their rights□

Breached secrecy by adding on the charge to the construction hearing□

whose names are also listed with their residential addresses and then in the□

electronic official gazette.□

2. Otherwise the complaint is dismissed.□

Legal basis: Article 5 (1) (c) of Regulation (EU) 2016/679 (data protection□

Basic Regulation - GDPR), OJ No. L119 of 4.5.2016, p. 1; § 1 of□

Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended; §§ 19, 41, 42 of the General□

Administrative Procedures Act 1991 – AVG, Federal Law Gazette No. 51/1991 as amended; Sections 22, 25, 26, 27□

of the Styrian building law – Stmk. BauG LGBl. No. 59/1995 as amended.□

REASON□

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

1. The complainants, represented by counsel, alleged in their complaint that□

Violation of the fundamental right to data protection according to § 1 DSG and brought in□

Essentially, because of their status as neighbors, they have regard to that□

Construction project "E\*\*\* Gasse 3\*, 8\*\*\* N\*\*\*" a corresponding summons to the building negotiation□

received on 10/18/2018. The Respondent had this building negotiation in□

electronic official gazette of the authority.□

Under the heading "current construction projects and edicts" the relevant□

Let building projects be found at least up to the day of the building negotiations and be too□

the charge has been provided as a pdf file. The complainants noticed that□

that the corresponding pdf document is also the first hit on Google□

was reported if one or both names of the applicants as□

Enter search parameters. The private residential addresses of the□

Complainants appear and thus enable third parties, having knowledge of the□

Name also to find out the place of residence.□

Both the announcement on the electronic official board and the□

also the naming of the names of the persons invited to the building negotiations by the□

§§ 41, 42 AVG in conjunction with § 19 AVG. However, it violates fundamental rights□

Data protection that the names of the complainants are linked in such a way that□

Entering this as a search parameter in Google immediately brings up the corresponding pdf document□

will be displayed. It is also not understandable why in the course of the□

Announcement on the Internet in addition to the names also the private addresses of the□

affected persons are cited, especially since there is an order to this effect□

neither in Stmk. BauG can still be found in the AVG.□

2. In its submission of January 29, 2019, the Respondent essentially submitted that□

that the notification and summons of the perennial and□

previously unobjectionable practice of the Respondent's building and facility authority□

correspond to which the scheduling of construction negotiations iSd. § 25 Stmk. BauG□

announced, inter alia, on the Respondent's electronic official board□

become. The names and addresses of the neighbors invited to construction negotiations are in□

also always mentioned in these announcements.□

The building and plant authorities have no legal or actual□

Opportunities to influence the way electronic links are made□

documents that can be accessed via the Respondent's website□

internet search portals. As a precaution, the names and addresses of the□

Neighbors since November 2018 until further notice are no longer available on the Internet□

Announcements and summonses listed. On the part of the management of the construction and□

Investment authority was a corresponding information by e-mail from 12.12.2018□

all employees of this department.□

3. As part of the granted party hearing, the complainants led in their□

Statement of March 11, 2019 summarized from the fact that the publication of□

Construction negotiations including the attachment of a list of residents with the names of the□

invited neighbors is not considered a violation of § 1 DSG, but as a legal one□

permissible "suitable form of announcement" within the meaning of §§ 25 and 27 Stmk. BauG qualified□

become.□

It is the task of the respondent to ensure that their data protection-compliant state□

Create a website in such a way that when you enter the names, the□

relevant link to the pdf document in question appears.□

Due to the tightening of data protection law in connection with the GDPR□

it is necessary to certify the data protection conformity of numerous procedures□

review and sometimes adjust. § 27 Stmk. BauG standardize that one□

Announcement form is suitable if it ensures that a neighbor of the□

planning of the construction negotiations probably gain knowledge. purpose of this□

The regulation is to avoid neglected neighbors and to prevent delivery defects.□

However, this goal can also be achieved by leaving out private residential addresses in the

Resident directory can be reached. An explicit arrangement, this in the notice

record, leave neither in the Stmk. BauG can still be found in the AVG.

Article 6 paragraph 1 lit. e GDPR is invalidated, since the performance of the official task

even if the name is only given and the private residential address is omitted

can be properly perceived.

## B. Subject of Complaint

Based on the submissions of the appellants, it follows that

The subject of the complaint, on the one hand, is the question of whether the Respondent

Complainant has violated the fundamental right to secrecy by the

Names of the complainants are linked in such a way that when entering this data

immediately the corresponding pdf document as a search parameter in a search engine

(Claim for construction negotiations) is displayed. On the other hand, the question arises whether the

Respondent informed the complainants by providing their residential addresses in

In the course of the announcement and summons to the construction negotiations in the electronic official journal

violated the fundamental right to data protection.

## C. Findings of Facts

The complainants, because of their status as neighbors regarding the

Construction project "E\*\*\* Gasse 3\*, 8\*\*\* N\*\*\*\*" by the respondent as building authority

received a summons to the relevant building negotiation dated October 18, 2018. The charge

contained not only the names but also the residential addresses of the complainants. the

The Respondent also has the appointment of the construction negotiation in the electronic

Official Journal of the Authority, on the Respondent's website

([https://www.n\\*\\*\\*gv.at/cms/\\*\\*\\*/DE](https://www.n***gv.at/cms/***/DE)), under the heading "Current construction projects and edicts"

provided as a pdf file.

If you enter one or both names of the complainants as a search parameter in the

Google search engine was the one on the electronic Official Journal□

Respondent provided pdf document (summary for construction negotiations) as□

first hit displayed on Google.□

In the procedural announcement and summons to the GZ \*\*\*-Bau\*\*-□

0\*2\*3\*87-\*\*\*5 are listed under the heading "Neighbors" as follows:□

[Editor's note: The original at this point as a graphic file□

reproduced excerpt from the announcement cannot be made with justifiable effort□

be pseudonymised. It consists of a list of 26 neighbors, including one□

sequential number, title, first name, surname (or company) and address.]□

The first complainant is listed under item 13. the second□

Complainant is listed under number 12.□

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

parties and on the content of the file.□

D. In legal terms it follows that:□

Regarding point 1:□

The Respondent is an authority within the meaning of Section 1 (2).□

DSG, so that an encroachment on the fundamental right to data protection is only possible on the basis of a□

statutory provision into account.□

The complainants are indisputably neighbors within the meaning of□

Stmk. BauG, so that they had to be invited to the construction negotiations in order to obtain rights if necessary□

to be able to claim.□

The subjective rights accruing to a neighbor in a building process are in□

§ 26 para. 1 and 4 Stmk. BauG listed exhaustively (cf. the knowledge of□

Administrative Court of October 6, 2011, ZI. 2011/06/0003).□

In the present case, it is not clear to what extent the listing of the residential addresses of the□

Complainant (and the other neighbors) to fulfill official tasks -□

concretely: arranging and conducting an oral construction negotiation –□

is required.□

The listing of residential addresses could only serve the purpose of checking whether one□

invited person has party status in the construction process. But this is up to the□

Building authority or the building contractor (cf. § 25 Para. 1 Z 5 in conjunction with § 22 Para. 2 Z 4□

Stmk. BauG), a possible lack of party status of a neighbor can - there□

Nothing in this regard on § 26 Stmk. BauG results - from another neighbor not as□

subjective public law can be objected to.□

Since the listing of the complainants' residential addresses on the summons to□

Construction negotiation turns out not to be covered by law, this was a violation of the law□

to be determined accordingly.□

Regarding point 2:□

§ 1 para. 1 DSG stipulates that everyone, especially with regard to respect□

of his private and family life, right to secrecy concerning him□

personal data, insofar as there is a legitimate interest in it.□

Responsible according to Art. 4 Z 7 DSGVO is the natural or legal person□

Person, authority, agency or other body, alone or jointly with others□

decides on the purposes and means of processing personal data.□

The decisive criterion is therefore the power to decide on the purpose and means of□

Processing. The role of the person responsible thus results primarily from the□

Fact that a particular body has decided to use personal data for their□

to process for their own purposes.□

The controller is the person or entity responsible for□

has ensured that the data protection provisions of the GDPR are complied with. In order to□

the person responsible is considered the addressee of the obligations under the GDPR and the term serves□

the assignment of responsibilities. The person responsible is the addressee of□

Claims of the person concerned and is considered the point of contact for measures taken by the

Supervisory authority (Hödl in Knyrim, DatKomm Art 4 DSGVO Rz 77,

Status 1.12.2018, rdb.at)

The complainants can be countered that the appearance of the

the present announcement when using the Google search engine is not included in the

Respondent's area of responsibility falls. A power of decision

Respondent regarding the use of data for the Google

Search results are not visible. The ECJ already ruled in the judgment of May 13, 2014, C-

131/12, stated that a search engine operator as an independent

to qualify as the person responsible under data protection law.

An alleged violation of the right to privacy by reporting

Personal data as a result of a Google search can

the present proceedings are not dealt with. A complaint would have to

in this regard against the operator of the search engine Google as the person responsible for the

data processing.

The complaint therefore turns out to be unfounded on this point, which is why

was to be decided accordingly.