

GZ: DSB-D123.098/0003-DSB/2018 from 10.9.2018□

[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 and/or changed for reasons of pseudonymization. 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 Erna A***□

(Appellant) of June 28, 2018 against N*** Versicherungs-□

Public limited company (respondent) for violation of the right to secrecy□

as a result of the transfer of personal data as follows:□

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

Respondent thereby waives the right of the complainant□

Secrecy violated by□

a) Peter A*** in the course of an insured event to the Respondent□

disclosed the sum insured orally and□

b) then a payment confirmation of the transfer of the□

Respondent to the complainant's account to Peter A***□

submitted.□

Legal bases: § 1 para. 1 and 2, § 7 para. 2 and § 8 para. 1 Z 4 and 3 des□

Data Protection Act 2000 (DSG 2000), Federal Law Gazette I No. 165/1999 as amended in Federal Law Gazette I No. 83/2013;□

Section 18 and Section 24 (5) of the Data Protection Act, Federal Law Gazette I No. 165/1999 as amended.□

REASON□

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

In its submission of June 28, 2018, the complainant submitted a statement□

of July 24, 2018 to the data protection authority, the□

Respondent received a payment confirmation regarding without her consent□

a transfer by the Respondent to the Complainant's account□

handed over to Peter A*** Installations & Heizs GmbH.□

The Respondent replied with a statement dated July 19, 2018□

In summary, although she sent the confirmation of payment to Peter A***, she was□

however, it is assumed that Peter A*** is still in contact with the complainant□

upright marriage. Peter A *** are also former spouses□

personal data of the complainant known. The only exception is□

information about the amount paid out. In the course of an isolated□

Viewing this information is not an identification with the□

Appellant possible and therefore do not set the amount□

personal data. Should there still be a personal reference, so have□

the economic interest of Peter A*** in any case the interest of□

Complainant on secrecy outweighed because Peter A *** the amount of□

transferred amount as evidence to untrue□

to refute the complainant's allegations.□

B. Subject of Complaint□

Based on the submissions of the appellant, it follows that□

The subject of the complaint is whether the Respondent, by disclosing the□

insurance sum paid and transmission of the payment confirmation to Peter□

A*** regarding a transfer by the Respondent to the account of□

Appellant against the Appellant's right to secrecy□

has violated.□

C. Findings of Facts□

The respondent is an insurance company. Between the□

The complainant and the respondent had a contractual relationship.□

In the course of a claim, the complainant took the respondent in

Claim. The performance of €926.40 was paid by the Respondent on March 20th

2018 transferred directly to the complainant.

Peter A**, the applicant's divorced spouse, then contacted the

Respondent in April 2018, specifically its employee Mr. T**, and asked

which is why only one amount was sent to the complainant instead of €926.40 (according to the invoice).

of € 650,-- was transferred.

Mr T** informed Peter A** that on March 20, 2018, the complainant

Amount of € 926.40 was transferred. Since Peter A** this due to

Not believing the complainant's statements, Mr T** printed a confirmation of the

payment made to the complainant and handed it over to Peter

A**.

This was done without the knowledge and consent of the complainant.

Peter A** sent a letter to the complainant on April 23, 2018, in

whom he informed her that he knew that the Respondent of

Complainant transferred an amount of €926.40 on March 20, 2018

had.

The incident was reported to the Respondent on April 26, 2018 as a violation of

Protection of personal data logged.

Evidence assessment: The statements made are based on that

concurring arguments of the parties.

D. In legal terms it follows that:

This complaint is procedurally based on the new legal situation (DSG as amended in Federal Law Gazette I

No. 24/2018) in accordance with Section 24 (5) DSG. It is a matter of substantive law

however, according to April 2018, the time of the alleged infringement of the right

on secrecy, applicable provisions of §§ 1 to 9 DSG 2000, Federal Law Gazette I

No. 165/1999 as amended by Federal Law Gazette I No. 83/2013.□

The constitutional provision of Section 1 Paragraphs 1 and 2 DSG 2000 as amended by Federal Law Gazette I No. 83/2013□

read including the title (emphasis added by the data protection authority):□

“Fundamental right to data protection□

§ 1. (1) Everyone has, in particular with regard to respect for his private and□

family life, right to confidentiality of personal data concerning him□

Data insofar as there is a legitimate interest in it. The existence of such□

Interest is excluded if data due to their general availability or□

because of their lack of traceability to the person concerned□

secrecy claim are not accessible.□

(2) Insofar as the use of personal data is not essential□

interest of the person concerned or with his consent are restrictions of the□

The right to secrecy only to protect overriding legitimate interests□

of another, and in the case of interventions by a state authority only on grounds□

of laws resulting from the in Art. 8 para. 2 of the European Convention for the Protection of□

Human rights and fundamental freedoms (EMRK), Federal Law Gazette No. 210/1958□

are necessary. Such laws prohibit the use of data by their nature□

are particularly worthy of protection, only to protect important public interests□

and at the same time must provide adequate guarantees for the protection of□

Specify confidentiality interests of those affected. Even in the case of permissible□

The encroachment on the fundamental right may only be restricted in the mildest way□

be made in a goal-oriented manner.”□

By stating the insured sum paid out and submitting the□

The Respondent gave personal confirmation of payment to Peter A***□

Complainant's data to third parties, namely Peter A***.□

Contrary to the allegations of the Respondent, the naming is the case□

of the transmitted payment amount by data on the assets of

Complainant and thus also a personal date. No

It is therefore sufficient argument that the payment amount considered separately does not

Personal reference has, because of such a contextless perspective in the

In most cases there would be no personal reference and it would therefore be possible to circumvent it

data protection regulations. As the ECJ explained, there is a

personal date even if individual clues are isolated

not yet considered to allow identification of a person, identification of a

person is possible with legal additional funds and reasonable effort (cf

the judgment of October 19, 2016, C-582/14, para. 43ff). In the representational

Case was not only the sum insured alone Peter A *** without context

Noted, but also the date of the transfer, which in

In connection with the amount transferred, there is also a personal reference

allows.

Since the financial circumstances are also an interest worthy of protection

acts, the Respondent has thus in the fundamental right of the complainant

intervened on secrecy according to § 1 Abs. 1 DSG 2000.

As established, the transfer of the personal data to Peter A***

moreover, no approval of the complainant within the meaning of § 1 para. 2 DSG 2000

and in any case no vital interests are affected, which is why one

Restriction of the right to secrecy only to protect overriding

legitimate interests of another is permissible.

With regard to such overriding legitimate interests, the

Respondent on § 8 para. 1 no. 4 DSG 2000.

§ 8 para. 1 and 3 DSG 2000, Federal Law Gazette I No. 165/1999 as amended by Federal Law Gazette I No. 83/2013 read together

Headline (emphasis added by the data protection authority):

“Privacy interests worthy of protection when using non-sensitive data ☐

§ 8. (1) Confidentiality interests worthy of protection are less sensitive when used ☐

data then not violated if ☐

1. An express legal authorization or obligation to use the ☐

data exists or ☐

2. the data subject has consented to the use of his data, with a revocation ☐

is possible at any time and causes the inadmissibility of further use of the data, ☐

or ☐

3. vital interests of the person concerned require the use or ☐

4. Overriding legitimate interests of the client or a third party ☐

require use. ☐

(2) [...] ☐

(3) Confidentiality interests worthy of protection are for the reason of paragraph 1 no. 4 ☐

particularly not violated when using the data ☐

1. For a client in the public sector, an essential requirement for ☐

is the performance of a task assigned to him by law or ☐

2. by clients in the public sector in fulfillment of the obligation to ☐

Administrative assistance happens or ☐

3. is necessary to safeguard the vital interests of a third party or ☐

4. to fulfill a contractual obligation between the client and the person concerned ☐

is required or ☐

5. to assert, exercise or defend legal claims of ☐

client before an authority is necessary and the data was determined lawfully ☐

or ☐

6. exclusively the exercise of a public function by the person concerned ☐

has subject or ☐

7. in the event of a disaster, to the extent that this is necessary to provide assistance to those affected by the disaster□

persons directly affected, to locate and identify missing persons and□

deceased and to inform relatives; in the latter case□

§ 48a paragraph 3 applies."□

In this context, however, § 7 DSG 2000 must also be observed, which□

admissibility of a transmission regulates.□

Section 7 (2) DSG 2000, Federal Law Gazette I No. 165/1999 as amended in Federal Law Gazette I No. 83/2013 read together□

Headline (emphasis added by the data protection authority):□

“Acceptance of Use of Data□

Section 7. (1) [...]□

(2) Data may only be transmitted if□

1. they come from a data application permitted under paragraph 1 and□

2. the recipient has given sufficient legal jurisdiction to the sender or□

legal authority - insofar as this is not beyond doubt - with regard to the□

has made the purpose of transmission credible and□

3. those worthy of protection due to the purpose and content of the transmission□

Confidentiality interests of the data subject are not violated."□

That the transmitted data comes from a permissible data application, namely the□

Contractual relationship between the complainant and the respondent□

come from is undisputed.□

With regard to § 7 Para. 2 Z 2 DSG 2000 it should be stated that the mere fact that□

Peter A*** to the Respondent as a husband or divorced husband□

asked about the payment made to the Respondent, not a statutory one□

Represents competence or legal authority, which for the transmission within the meaning of § 7 para. 2□

Z 2 DSG 2000 entitled.□

At this point it should also be noted that it makes no difference whether Peter A*** with□

of the complainant was still married or was already divorced. Because it

When it comes to the exercise of highly personal rights, Peter A*** has – for lack of

corresponding power of representation - in any case no right to disclosure of

personal data of the complainant.

If the Respondent with regard to § 7 Para. 2 Z 3 in conjunction with § 8 Para. 1 Z 4

DSG 2000 submits that the economic interests of Peter A*** outweigh and he

the received payment confirmation as evidence to refute untrue

have used allegations by the complainant, that is also the view

the data protection authority in any case no legitimate reason personal data,

which the Respondent processes in a bilateral contractual relationship

to transmit to third parties. Rather, the Respondent's view would lead to

that any person "for evidence gathering" personal data from third parties

could request.

Moreover, the fact that this incident was caused by the Respondent itself

internally logged as a personal data breach, evidence

that there is no credible economic interest for the Respondent either

of Peter A*** was apparent.

As a result, there are no overriding legitimate interests of Peter A***

and was the transmission of the data by the Respondent in accordance with § 7 para. 2

DSG 2000 not lawful.

The Respondent has thus, by disclosing the paid out

Sum insured and transmission of the payment confirmation to Peter A***

breach the complainant's right to secrecy pursuant to § 1 DSG 2000.

The present complaint was therefore found to be justified and was therefore upheld

To comply with § 24 para. 5 DSG and to determine the violation according to the verdict.