

[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 Andreas A\*\*\*□

(Appellant) of November 1, 2017 against the N\*\*\*-creditor protection association□

(Respondent) for violation of the right to erasure as a result of refusal of the□

Respondent's personal data of the complainant, which in the course□

of the communication, to be deleted as follows:□

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

**Respondent thereby deprives the complainant of his right□**

**Deletion violated by his request for deletion of his□**

**did not comply with personal data from July 22, 2017.**□

2. The Respondent is instructed to accept the Appellant's request□

to delete all data immediately, but no later than within **two**□

**Weeks** to correspond and the complainant subsequently from the□

to be informed in writing of the deletion of his data.□

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

idgF; Article 5 paragraph 1 letter e, Article 17 paragraph 1 letter a and paragraph 3 letter e, Article 57 paragraph 1 letter f, Article

Para. 2 lit. d and Art. 77 of 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□

In his submission of November 1, 2017, the complainant brought

Opinion of 17 November 2017 to the DPA in essence

before that the respondent has no corresponding legal basis and without

his consent saved his data. As a result, he

Respondent also insisted on requests for the complete deletion of his data

not corresponded. The submission contained several addressed to the respondent

Requests for Complainant's Deletion attached.

The Respondent replied with a statement dated November 9, 2017

In summary, the complainant had already requested deletion in 2012

requested from the database, which was also carried out. However, the data is

of the complainant (first and last name, date of birth and address) from "sicher

official reasons" in an internal work directory in accordance with § 8 Para. 2 Z 5 DSG

2000 (comment by clerk: obviously meant § 8 para. 3 Z 5 DSG 2000)

been saved. The storage of the data is for frequent communication with the

complainant and to ensure no re-recording of his data

necessary.

## B. Subject of Complaint

Based on the submissions of the appellant, it follows that

The subject of the complaint is whether the respondent by the rejection

the complainant's request for deletion, regarding the storage of the data

of the complainant for documentation and communication purposes against the

violated the right to erasure.

## C. Findings of Facts

On July 6, 2017, the complainant requested the deletion of his data from the

Respondent's database. Subsequently, its data were indeed

deleted and informed the complainant by letter dated July 27, 2017,

however, the Respondent informed the Appellant that a renewed storage of his data (first and last name, date of birth and current address) for documentation and communication purposes. Then coveted the complainant the deletion of all data, as to a storage for

There is no legal basis for documentation and communication purposes. To the However, the Respondent did not submit a new request for deletion met.

Evidence assessment: The statements made are based on that concurring arguments of the parties.

D. In legal terms it follows that:

1. Legal situation at the time of the decision:

According to the new legal situation applicable from May 25, 2018, this was previously according to § 30 DSG 2000, Federal Law Gazette I No. 165/1999 as amended by Federal Law Gazette I No. 83/2013 Ombudsman procedure as a complaint procedure according to § 24 DSG, Federal Law Gazette I No. 165/1999 as amended (cf. Section 69 (4) DSG).

2. On the right to erasure:

Art. 17 GDPR reads including the title (emphasis added by the data protection authority):

Article 17

Right to Erasure ("Right to be Forgotten")

(1) The data subject has the right to demand that the person responsible relevant personal data will be deleted immediately, and the person responsible is obliged to delete personal data immediately if one of the following reasons applies:

a) The personal data are necessary for the purposes for which they were collected or otherwise way were processed, no longer necessary.

b) The data subject withdraws consent on which the processing is based pursuant to Article 6

Paragraph 1(a) or Article 9(2)(a) and one is missing ☐

other legal basis for processing. ☐

c) The data subject objects to the processing pursuant to Article 21(1). ☐

and there are no overriding legitimate grounds for the processing, or the data subject ☐

The person objects to the processing in accordance with Article 21(2). ☐

d) The personal data have been processed unlawfully. ☐

e) The deletion of the personal data is necessary to fulfill a legal obligation ☐

required by Union law or the law of the Member States to which the person responsible ☐

subject. ☐

The personal data were ☐

f) ☐

Information Society collected in accordance with Article 8(1). ☐

in relation to the services offered ☐

(2) Has the person responsible made the personal data public and is he in accordance with ☐

Paragraph 1 obliged to delete them, he shall take into account the available ☐

Measures appropriate to the technology and the implementation costs, also of a technical nature, ☐

to data controllers who process the personal data, ☐

to inform that a data subject of them the deletion of all links to these ☐

personal data or copies or replications of such personal data ☐

has demanded. ☐

(3) Paragraphs 1 and 2 do not apply if processing is necessary ☐

a) to exercise the right to freedom of expression and information; ☐

b) to fulfill a legal obligation that requires processing under Union law ☐

or the Member States to which the controller is subject, or for the purpose of administration ☐

a task that is in the public interest or in the exercise of public authority ☐

has been transferred to the person responsible; ☐

c) for reasons of public interest in the field of public health pursuant to Article

9 paragraph 2 letters h and i and Article 9 paragraph 3;

d) for archival purposes in the public interest, scientific or historical

Research purposes or for statistical purposes in accordance with Article 89 paragraph 1, insofar as this is specified in paragraph

said law presumably makes it impossible to achieve the objectives of this processing

or seriously impaired, or

e) to assert, exercise or defend legal claims.

In the present case, the complainant has Art. 17 Para. 1 GDPR

demands that the personal data concerning him/her be deleted immediately.

The Respondent bases its statement on the

Data protection authority on § 8 para. 3 Z 5 DSG 2000, which after May 25th

The legal situation applicable in 2018 is covered by Art. 17 Para. 3 lit e GDPR.

Art. 17 para. 3 GDPR standardizes exceptional circumstances in which there is no right to erasure

according to Art. 17 Para. 1 and Para. 2 DSGVO.

The respondent's brief reference to "certainly known reasons".

however, by no means constitutes sufficient evidence to show that the

Processing according to Art. 17 Para. 3 DSGVO to prove. Especially the storage

of the data with regard to a possible future contact with the

Complainant if he requests the deletion of all his data and

it can be concluded from this that such communication will no longer take place

according to Art. 17 (1) lit. a GDPR not necessary. Unlimited storage

of personal data for a possible future contact

also a violation of the principle of memory limitation

Article 5 paragraph 1 lit. e GDPR.

Other reasons justifying continued data storage were

Respondent not submitted.

From the point of view of the data protection authority, the result is therefore not a necessary one □

Data processing of the respondent according to Art. 17 Para. 3 GDPR and proves □

the complainant's request for the deletion of his personal data □

justified for the reasons discussed above. □

For the restoration of the data protection compliant state was dem □

to instruct the respondent pursuant to Art. 58 Para. 2 lit d GDPR immediately, □

at the latest, however, within two weeks, all of the complainant's data □

delete and to notify them of the deletion. □