

GZ: DSB-D124.1492/0001-DSB/2019 of October 11, 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 Erwin A***□

(Appellant) from **** B*** of October 1, 2019 against MMag. Waltraut N***□

(Respondent) for violation of the right to information in consequence 1. partial□

Refusal of February 1, 2018 request for transmission of findings,□

Test results and questionnaires regarding the psychological diagnosis of the□

minor Maria D*** by letter dated February 9, 2018 and□

2. Failure to respond to a recent such request dated April 4, 2018 as follows:□

~ The complaint is rejected.□

Legal basis: Section 24 (4) of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999□

idgF.□

REASON□

A. Submissions of the Complainant□

1. With a submission dated October 1, 2019 (inbox, e-mail), the complainant submitted□

as follows (spelling as in the original):□

"Dear Ladies and Gentlemen!□

I am making a complaint against Ms mmag. n***, the birth parents to date□

their completed questionnaires, the entire test documents for the diagnostic□

Assessment of our mj. daughter from January 16, 2018 and the personal data□

my family during the period of contact and beyond□

withheld.□

on my electronic entries and / or request as before - as a request□

information according to art 15 eu-dsgvo are to be evaluated - ultimately one is not at all□

received. is added that my identity is already through the personal□

proof of presence on 26 january 2018 in the course of the parent talk□

would.□

You are therefore requested to take immediate action against these numerous violations.”□

2. Attached to the input were five documents (PDF), one on February 1, 2018□

beginning correspondence of the complainant with the practice of□

Respondent, who works as a clinical and health psychologist, occupational and□

Organizational psychologist, works on the transmission of findings,□

Test results and questionnaires regarding the psychological diagnosis of the□

minor Maria D*** (including previous correspondence). In this matter□

the complainant as the father of the finding concerning the underage Maria D***□

transmitted and informed him on February 9, 2018 that a transmission of the□

anamnesis forms will not take place, as their content has been incorporated into the findings.□

3. On April 4, 2018, the complainant submitted his request for transmission of the□

"Questionnaires" submitted by the parents in the course of the diagnosis,□

repeated without getting an answer this time.□

4. In no case has the Complainant opposed to the Respondent□

the right to information under data protection law in accordance with Art. 15 GDPR (or before May 25th□

2018: Section 26 (1) DSG 2000).□

B. Subject of Complaint□

5. First of all, it must be checked whether the right to collect a data protection law□

Complaint not already following expiry of the one-year preclusion period according to § 24□

Para. 4 DSG has expired.□

C. Findings of Facts□

6. The DPA bases its decision on the complainant's submissions□

and the documents submitted by him (see A. above).□

Evidence assessment: These findings result from the content of the files□

(Input piece in GZ: DSB-D124.1492/0001-DSB/2019).□

D. In legal terms it follows that:□

7. The right to lodge a complaint is valid even if two requests for information and□

Based on the start of the run that is most favorable for the complainant□

expired after the preclusion period.□

8. In the following explanations, the DSG 2000 is the Data Protection Act, Federal Law Gazette I□

No. 165/1999 as amended by Federal Law Gazette I No. 132/2015 (at that time legally defined□

Abbreviation of legislation), while with DSG the Data Protection Act in the□

current version (legal abbreviation of□

Legislation since Federal Law Gazette I No. 120/2017).□

9. Section 24 (4) DSG states that the right to have a complaint dealt with expires□

if the intervener fails to do so within one year of becoming aware of it□

adverse event, but at the latest within three years after that□

event of alleged dimensions has taken place. Late complaints are□

to reject.□

10. In the event of a complaint due to a violation of the right to information (Article 15 GDPR),□

the "aggravating event" in each case the alleged inadequate provision of information, the□

total or partial refusal to provide information or failure to respond to the□

Request for information within the one-month period in accordance with Art. 12 (3) GDPR or before□

May 25, 2018 of the eight-week period in accordance with Section 26 (4) DSG 2000 (cf. on□

Non-reaction as a time-triggering event the decision of the earlier DSK dated□

April 15, 2011, K121.673/0008-DSK/2011, RIS).□

11. The complainant's first request for information was made on 9 February□

Partially rejected in 2018. The complainant to whom this was communicated by e-mail□

rejection undisputedly became known on the same day, would be from this date□

Time a year available to file a complaint for infringement□

to exercise his right to information. This year-long procedural□

Preclusion period has been due to the new data protection law since May 25, 2018 (effective□

of the GDPR, comprehensive new version of the DSG) did not experience any change, before it was□

(largely identical) in § 34 paragraph 1 DSG 2000 regulated. The corresponding□

The right to appeal is therefore subject to the calculation rule in accordance with Section 32 (1).□

AVG expired at the end of February 9, 2019.□

12. The complainant's second request for access was made on April 4, 2018□

placed. According to Section 26 (4) DSG 2000, which was still in force at the time, the□

Respondent has eight weeks to reply. This period ended at□

Application of the calculation rule in accordance with Section 32 (2) AVG on May 30, 2018. It was true□

at this time § 26 paragraph 4 DSG 2000 already expired, but the□

Application of the old deadline is more favorable for the complainant here, since it□

causing the adverse event to occur later. From that point on, he was□

Appellant conceivable due to the respondent's non-reaction□

complained and would in turn have one year to submit one□

had a data protection complaint. The corresponding right of appeal is□

therefore expired at the end of May 30, 2019.□

13. In this case, arising from the submissions of the complainant and those of□

documents submitted to him clearly shows that there were no defects in form or content□

of the complaint, nor to questions arising from the facts of the□

of a legal nature (unlike the complainant, not every□

Demand for unspecified information or for the release of □

Documents must be evaluated as a request for information under data protection law, cf. e.g. □

on the old legal situation, the decision of the DSK dated October 22, 2008, K121.386/0009-DSK/2008, □

RIS) to go into more detail. □

14. The complaint filed on October 1, 2019 was rather summary because □

expiry of both conceivable rights of appeal. □