

[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.]

The name of the Respondent has not been pseudonymised because processing

of the content of the decision, which made it impossible to identify the respondent

or would have made it significantly more difficult only by largely removing the comprehensibility

of the content of the decision would have been possible. The right to secrecy (§ 1 DSG)

and confidentiality interests of the Respondent, a legal entity whose

lawful action has been determined in the decision, the legal

Order in accordance with Section 23 (2) DSG, which is a decision by

is of fundamental importance to the general public, as there are some legal issues here

have been treated for the first time. The decision was therefore, despite the impossibility of

full pseudonymization, because of the outweighing of the general interest in the

Publication in the decision documentation of the data protection authority

record.]

NOTICE

S P R U C H

The data protection authority decides on the data protection complaint of the Univ. prof

dr Julius A*** (complainant) from ****, on August 1, 2019 against the Foundation

Documentation archive of the Austrian resistance (in short: DÖW, respondent)

from Vienna, represented by the lawyers B*** and D*** Ges.m.b.H. from Vienna, because

Violation of the right to erasure as a result of the rejection of the July 2nd erasure request

2019 by letter from the Respondent dated July 29, 2019 as follows:

~ The complaint is rejected.□

Legal basis: Article 5 paragraph 1 letter b and e, Article 9 paragraph 1 and paragraph 2 letter j, Article 17 paragraph 3 letter d,□

Article 21 (6) and Article 89 (1) and (3) of Regulation (EU) 2016/679 (data protection□

Basic Regulation, hereinafter: GDPR), OJ No. L 119 of May 4th, 2016 p. 1 as amended, in conjunction with § 2b□

Z 12, § 2d para. 6 Z 3 and Z 6 and § 2 f para. 1 of the Research Organization Act (FOG),□

Federal Law Gazette No. 341/1981 as amended.□

REASON□

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

1.□

This complaints procedure follows on from the complaints procedure ZI. DSB-D123.582,□

that a quarrel□

between the same parties for data protection reasons□

providing information (Article 15 GDPR). That procedure was (according to□

subsequent provision of information by the respondent) by hiring in accordance with□

§ 24 para. 6 DSG ended.□

2.□

With a complaint dated August 1, 2019 (in the version of the defect rectification dated□

September 10, 2019), the complainant claimed, on July 2, 2019, the deletion of all□

to have applied to the Respondent for data processed on his person. the□

Respondent process data on his person and classify him by keywords□

as "extreme right". This refers to the Respondent's online access□

Media contributions made (according to the information provided in the complaint procedure ZI. DSB-D123.582)□

and statements made by Dietmar T***, an employee of the Respondent□

the media. The Respondent could not rely on any authorization under the GDPR□

processing of such special categories of personal data. the□

Furthermore, the Respondent does not use such data, as alleged,□

for

scientific but

for

daily political purposes. The by writing the

Attorneys for the Respondent of July 29, 2019 rejected the deletion

is therefore illegal.

3.

With a statement dated October 11, 2019, the

legally represented

Respondent to the following: The complainant, the

Respondent obviously generally dislikes, have quotes from

DÖW employee Dr. Dietmar T***, responsible for the [editor's note: more precisely

Area of activity of the data subject removed because suitable for identifying them], in a

APA press release dated [Editor's note: Date for reasons of

Pseudonymization shortened] 2018 as an opportunity against the respondent

deal with privacy complaints. The Respondent collects

for

in the

public

interest

lying

archival purposes

and scientific-historical

Research purposes in the so-called "cut archive" relevant media reports and

publications and make them accessible. This data processing serves purposes in accordance with

Art. 89 para. 1 GDPR and is entitled to erasure by § 2d para. 6 FOG

exempt. The statements quoted in the media by Dr. T*** would also be on
based on his personal knowledge and assessment. Pursuant to Art. 9 Para. 1 and Para. 2
lit. e GDPR is the processing of specially protected data, for example for political purposes
persuasion of a data subject, permitted if they have made it public themselves
have. The applicant's political beliefs, which Dr. T*** played back
is no secret and is based on verifiable, publicly made statements by the
Complainant (such as the one that the Respondent is "[Editor's note:
Quote removed as deemed appropriate to identify the complainant]"). the
Respondent requested that the proceedings be discontinued "due to lack of complaints".

4.

With procedural order of October 15, 2019, GZ: DSB-D124.1177/0003-DSB/2019,
both parties were informed that the data protection authority specified
Parts of the file content of the complaint procedure ZI. DSB-D123.582 ex officio as
Evidence will also be used in this matter. Both parties became the
corresponding file contents (also to the complainant for the statement of the
Respondent) granted a hearing.

5.

In a statement dated December 16, 2019, the complainant submitted that
the information provided by the Respondent proves that the Respondent
In any case, data not "only" for scientific purposes, but also for day-to-day political purposes
process.

B. Subject of Complaint

6.

It follows from the arguments of the parties that the subject matter is whether the
Respondent
was obliged

on□

the complainant□

related□

Personal data processed for the purposes of the so-called "cut archive".□

be deleted at the request of the complainant.□

C. Findings of Facts□

7.□

The Respondent is a foundation according to the Federal Foundation and Fund Act 2015□

(BStFG 2015), is based in Vienna and is number 216 in the foundation register□

registered by the Federal Ministry of the Interior.□

Evidence assessment: This statement, which is undisputed, is based on the information provided by the□

Respondent and the insight□

in the online register of foundations□

https://www.bmi.gv.at/409/files/2019_12_Stiftungs-Administration.pdf, on January 10, 2020).□

8th.□

The Respondent pursues, among other things, the purpose of scientific research on□

History of fascism and National Socialism, resistance against the latter□

Movements and political manifestations of right-wing extremism, including the□

documentation and archiving purpose already mentioned in the institution's name. the□

Respondent, who has acted as sponsor of the DÖW since 1983, was and will be□

financed to a large extent by the federal government and the city of Vienna.□

Evidence assessment: This finding is based on generally known facts (§ 45 Para. 1□

AGG).□

9.□

The Respondent operates different types of archives. That is relevant here□

so-called "cut archive", in which excerpts from various media, in particular□

Daily newspapers are stored. These articles are stored online and

tagged.

10

Regarding the complainant, the following media reports in the "cut archive" with the

Names of the complainant linked (keyworded) processed:

[Editor's note: Listing of media reports [including URLs] has been removed since

it appears suitable for identifying the complainant and for understanding the

decision is not mandatory.]

Evidence: These findings are based on the knowledge of the parties

file content of the GZ: DSB-D123.582/0002-DSB/2019 and the GZ: DSB-

D123.582/0003-DSB/2018.

11.

On July 2, 2019, the complainant sent the following letter to the

Respondent:

[Editor's note: The document reproduced at this point as a graphic file

cannot be pseudonymised with reasonable effort. It is a

Request for deletion in accordance with Art. 17 GDPR on a request from the data protection authority

provided form. The reasons given by the complainant for his

Right to erasure reads: "The DÖW states (...) that the data "to be in the public domain

Interest lying archival purposes and scientific and historical

research purposes". In its press release of [...]

referenced to data stored about me. This press release had the

dedicated intention to influence day-to-day politics. It also aims to

to diminish my reputation in public. These are not for archival purposes

nor scientific and historical research purposes according to § 2d in conjunction with §2f FOG and Art 89

GDPR."]

12.□

The Respondent replied to the Appellant as follows:□

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

Response letter dated July 29, 2019 cannot be pseudonymised with reasonable effort□

will; here is a slightly shortened transcription:)]□

[Letterhead of the law firm representing the Respondent]□

“Dear Univ.-Prof. dr Julius A***!□

At the beginning we may announce again that we are supporting the Foundation Documentation Archive of the□

Austrian resistance represented in a legally friendly manner. On behalf of our client□

May we send you the following statement on your request for deletion from July 2nd, 2019□

to transfer:□

From your request for deletion, it is not clear to us which personal data□

data you want deleted, especially since there is no written press release from the DÖW dated□

[Editor's note: Date shortened for reasons of pseudonymization] 2018 there. As□

already presented in our disclosure of March 15, 2019, the quote is based on□

Doctor T*** on his extensive expertise on this subject. the□

Doctor T*** only gave an oral statement on the APA request□

Shape.□

Numerous copies of the journal des Österreichisches [Editor's note: Name□

an umbrella organization of school and student associations] are in the library of the□

DÖW publicly available. The authors of each article or those referred to in those articles□

However, the persons mentioned are neither analogue nor digital from our client□

recorded and stored. It is therefore not possible for our client to use the referenced□

Speech published in a journal of the Austrian [editor's note: same as last]□

is printed to delete. It is a physical journal collection□

which the magazines are filed by year.□

No personal data is processed in this journal collection□

or stored, in addition, there is at least in the public interest in this regard□

lying archival purposes as well as scientific and historical research purposes.□

According to the legal regulations, we have to inform you that you have the right□

is entitled to lodge a complaint with the□

Data Protection Authority (www.dsb.gv.at)."□

Assessment of Evidence: These findings are based on the appendices submitted by the complainant□

documents submitted with the complaint.□

D. In legal terms it follows that:□

Total:□

13.□

The complaint turned out to be unfounded.□

Procedural Note□

14□

The complaints procedure according to Art. 77 GDPR is, in particular in the Austrian□

procedural design by § 24 DSG, by a party application, the□

Complaint, initiated adversarial multi-party proceedings,□

in which the□

Data protection authority must decide by decision, to the extent and as long as complaint□

present. The latter is the case and the cessation requested by the Respondent□

of the procedure is therefore not considered here.□

Respondent as a scientific institution□

15□

The Respondent is a scientific institution according to § 2b Z 12 FOG, since it□

as a non-profit organization (foundations according to BStffG are according to § 1 Abs. 1 BStffG per□

by definition, either "non-profit" or "charitable", with the latter already being absent□

corresponding assertion is ruled out) carries out research activities. From the

public financing of the Respondent is the public interest in their

Activities can be derived.

16

In the opinion of the data protection authority, the management of the so-called "cutting archive" falls

under data processing for an archiving purpose in the public interest

Article 89 (3) GDPR. The appellant's contrary allegation that

Respondent is pursuing "current political purposes" and is therefore not scientific

active, not applicable. For this it would have to be proven that the archive management exclusively

political goals that the complainant did not describe in detail

to be useful. However, there was not even one for the inclusion of such evidence

sufficiently substantiated statement of fact. That the Respondent

takes a basic political stance that can be deduced from its name and always does so

expresses it publicly again, harms the scientific purpose of the

Activity of the Respondent, however, not.

Research privilege according to § 2d Abs. 6 FOG:

17

The Respondent cannot, contrary to its submissions, refer to the

flat-rate protection of § 2d para. 6 Z 3 FOG, which requires a deletion of

excludes personal data from archives of scientific institutions.

18

Section 2d FOG reads in part including the heading:

"Basic provisions on the protection of personal data

§ 2d. (1) [...]

(6) The following rights do not apply insofar as this enables the achievement of

Purposes according to Art. 89 Para. 1 DSGVO probably made impossible or seriously

is affected:□

1.[...].□

3. Right to erasure or right to be forgotten (Art. 17 GDPR),□

[...]□

6. Right to object (Art. 21 GDPR).”□

19. Pursuant to Article 1 Paragraph 3 Z 1 FOG, this federal law regulates the framework conditions□

for□

Processing (Art. 4 Z 2 GDPR) for archiving purposes in the public interest□

scientific or historical research purposes and for statistical purposes□

Within the meaning of Art. 89 Para. 1 GDPR.□

20□

Section 2d (6) FOG is, among other things, one in Art. 89 (3) GDPR□

(Opening clause) fundamentally provided national special provision in favor of□

archiving purposes in the public interest.□

21□

violates this provision□

however accurate□

in□

that point on which the□

Respondent bases, paragraph 3, against the wording of Art. 89 Para. 3 GDPR, which□

nationally defined exceptions to the right to erasure (“to be forgotten”)□

Art. 17 GDPR expressly does not provide for data processing for archiving purposes.□

22. In accordance with the principle of the primacy of application of Union law (cf. ECJ, judgment of□

March 9th, 1978, C-106/77 – Simmenthal II) § 2d Abs. 6 Z 3 FOG does not apply here□

remain.□

23. In principle, according to Art. 17 GDPR, data can also be deleted□

Processing is required for archiving purposes in the public interest□

pursue.□

Extended legality check of data processing□

24□

It therefore remains to be considered whether an application of the right to erasure□

("Being Forgotten")□

according to□

Article 17 GDPR□

the□

right to erasure□

of□

able to substantiate the complainant.□

25. Pursuant to Art. 17 Para. 1 GDPR, one of the□

in□

lit a to f listed□

cancellation requirements are met.□

26□

In accordance with lit c, an objection by the complainant against the□

Processing of his data (under the logical-systematic assumption that an application for□

Deletion always includes an objection to data processing) or□

according to lit d the lack of a lawful basis for data processing.□

a. Legal bases of the data processing of the respondent□

27□

The Union legislators (Council and Parliament) see several exceptions to stricter ones□

Rules of the GDPR for archiving purposes in the public interest and thus bring□

to express that archiving is in principle a permissible form of□

data processing is. News and press archives, such as the "Schnittarchiv", are available ☐

Furthermore, under the special protection of Art. 11 GRC (GDPR, recital 153). ☐

28 ☐

On the admissibility of data processing ☐

for ☐

in public ☐

interest ☐

lying ☐

Article 5 paragraph 1 lit. b and e GDPR also refers to archiving purposes. ☐

29 ☐

Art. 9 Para. 2 lit. j GDPR allows the processing of special categories of data, under ☐

other things to the political beliefs of a data subject, on the basis of ☐

Union law or the law of a Member State which is proportionate to that ☐

objective pursued, respects the essence of the right to data protection and is appropriate ☐

and specific measures to safeguard the fundamental rights and interests of data subjects ☐

Person provides, for archival purposes in the public interest, for scientific ☐

or historical research purposes or for statistical purposes pursuant to Art. 89 Para. 1 ☐

GDPR. ☐

30. Pursuant to § 7 Para. 1 Z 1 DSG, the person responsible may act in the public interest ☐

Archival purposes, scientific or historical research purposes or statistical ☐

Purposes that do not aim for personal results, all personal ☐

Process data that is publicly available. ☐

31. According to § 7 Para. 2 Z 1 DSG, data processing for purposes in the public interest ☐

lying archival purposes, scientific or historical research purposes or ☐

Statistical purposes that do not fall under paragraph 1, personal data, etc. according to ☐

special legal regulations are processed. ☐

32□

Section 2f FOG reads in part including the heading (underlining by the□

Data Protection Authority):□

"Data basis for activities for purposes according to Art. 89 Para. 1 DSGVO□

§ 2 f. (1) Scientific institutions (§ 2b Z 12) may research material (§ 2b Z 6)□

collect, archive and□

systematically record and process all data (§ 2b Z 5) that are required,□

to optimal access to data (§ 2b Z 5) and research material for purposes according to□

Art. 89 Para. 1 GDPR ("Repositories"), such as in particular:□

1. Names according to § 2g Para. 2 Z 1,□

[...]□

5. Other data required for archiving and classification, such as□

Location data or information pursuant to § 2g Para. 2 Z 1 and 2 on persons who□

have provided research material, as well□

6. further information, such as in particular:□

a) political background information [...]□

33□

From the quoted provisions of § 2 f paragraph 1 FOG it follows that the□

Respondent has a sufficient legal basis to conduct the□

"Cutting Archives" available.□

34□

The reason for deletion according to Art. 17 Para. 1 lit. d DSGVO is therefore not available. Union law□

also covers, together with the supplementary national law, the processing of special□

Categories of data for archival purposes in the public interest, including "political□

Background information" on individuals who are the subject of archived documents.□

In any case, a categorization that, as is the case here, is a discovery of□

Media reports allowing the complainant a

"national" or

attribute "German-national" attitudes.

b. Existence of an effective objection

35

Finally

It must be examined whether the respondent has raised an objection to the

Complainant had to be observed, who, according to Art. 17 (1) (c) GDPR, also in

Result would lead to an obligation to delete, being from the logical-systematic

It can be concluded from the context of the last provision cited that this is not only for the

Objection according to Art. 21 Para. 1 or 2 DSGVO, but also for those according to Para. 6 leg.

cit. must apply.

36

The only question here is an objection in accordance with Art. 21 (6) GDPR, which

Special provision the objection to data processing for the purposes specified in Art. 89 para. 1

GDPR mentioned processing purposes.

37. Pursuant to Article 21(6) GDPR, the data subject has the right, for reasons that

result from their particular situation, against the processing that concerns them

relevant personal data that are scientific or historical

Research purposes or for statistical purposes in accordance with Art. 89 Para. 1, objection

object, unless the processing is necessary to fulfill a public interest

underlying task required.

38. As is made clear in particular by recital 156 on the GDPR, it should

Member States may be allowed under certain conditions and subject to appropriate

Guarantees for data subjects Clarifications and exceptions in relation to the

Right to erasure and objection to the processing of personal data to im

archival purposes of public interest, for scientific or historical purposes□

research purposes or for statistical purposes.□

39□

The right of objection according to Art. 21 Para. 6 DSGVO is a relative right of objection that□

must be justified. According to Art. 21 Para. 6, the person responsible can object□

refuse if the processing is for scientific, historical or statistical purposes□

purposes to fulfill a task in the public interest (see above□

Haidinger in Knyrim, DatKomm Art. 21 GDPR (status October 1, 2018, rdb.at), margin nos. 2 and margin no. 45 f).□

40□

The complainant has to justify his objection or request for deletion□

summarized, the Respondent does not process data□

Archive purposes or scientific and historical research purposes, but□

use this data or have it in a press release from [note editor:□

Date truncated for reasons of pseudonymization] 2018 - which is claimed to be□

the Respondent, however, to the statement of a scientific employee of the□

Respondent acted towards a media service - used to□

Damaging public reputation and exerting "daily political influence".□

41. Whether this is or was the case could remain undecided because the use of archive data,□

according to § 2 f paragraph 1 no. 6□

lit. a FOG expressly with attachment□

"political□

Background Information" may be processed for such purposes the public□

interest in this data processing cannot be waived (see also above). To the□

Complainant would do so to protect his legally protected interests in this regard□

freely, against the statement (media report, press release, statement□

towards a media employee or media service, content of an interview or similar) with the□

to proceed by means of civil and media law.□

42□

However, the complainant has not been able to raise a reasonable objection□

to provide evidence which would have shown that the processing was carried out by the complainant□

relevant data for scientific, historical or statistical purposes□

Fulfillment of a task in the public interest is not required.□

43□

Therefore, the Respondent also requested the deletion of the Complainant's data□

on the basis of the right of objection in accordance with Section 21 (6) GDPR□

declined.□

44□

The appeal was therefore dismissed accordingly.□