

GZ: DSB-D209.750/1551-DSB/2019 from April 15, 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 application of Mag. Eduard A\*\*\*□

(Applicant) from \*\*\*\*stadt, dated March 24, 2019, to provide him with information on the following questions□

To give:□

1. Is there a question as to whether, in the case of a substantive indemnification of the complainant□

in the appeal proceedings before the Administrative Court (VwGH) reimbursement of expenses□

due, case law or what is the legal situation here?; and□

2. Is there any case law from the VwGH or the Federal Administrative Court (BVwG),□

what the facts are in the complaint proceedings because of a□

violation of the obligation to provide information?□

as follows:□

- It is f e r s t e l t e l t that the requested information corresponds to the claim□

is not subject to the provision of information and the information is therefore not given□

will.□

Legal bases: Section 1 (1) and (2) and Section 4 of the Information Obligation Act□

(Information Obligation Act 1987), Federal Law Gazette No. 287/1987 as amended.□

REASON□

A. Procedure, facts relevant to the procedure and application:□

1. The applicant is legally qualified and has already several times in his own case□

Complaint to the data protection authority. In the context of the application, he is

involved party in the proceedings regarding the revision of B\*\*\* Bank AG against the

Decision of the Federal Administrative Court of December 10th, 2018, GZ: W2\*\* 3\*4\*2\*7-1/7E

which the data protection authority is also involved as an official party (responsible authority).

2. Evidence assessment: These findings are based on the data protection authority

on record (see, among other things, the administrative files Zlen. DSB-D122.746, DSB-D062.124,

DSB-D073.044 and DSB-D078.535) facts and data.

3. On March 18, 2019, the applicant addressed a personal application

Mag. Michael Suda, the clerk of the data protection authority from the above

Evidence cited procedures, addressed e-mail to this and presented

(formulated in a summarized manner) including the questions quoted in the saying.

4. On the same day he received the following (to the sending address Eduard.A\*\*\*@\*\*\*mail.de)

answered:

"Michael Suda

on

Mag. Eduard A\*\*\* (requester)

Delivery and read receipt requested.

Reply-to set to: dsb@dsb.gv.at (please only reply to this address)

Dear Mag. A\*\*\*!

Firstly, I will relate your message quoted below, along with my response, to a

have thing as attachments to the act.

Second, please direct messages pertaining to a proceeding

Data protection authority, exclusively to the address of the authority:

dsb@dsb.gv.at. There is only this one permissible for e-mail traffic with the DSB

and published address. The editor of a

Administrative matter can change at any time, personal mailboxes will be in

Absence of the owner (vacation, illness, business trip, resignation□

from the service of the DSB) only viewed and read in justified exceptional cases.□

Third, I cannot give you personal advice on specific legal issues□

to offer. Procedure is procedure, and between a referee and a party there□

In this regard, there is no "private area" that can be used "off-the-record" for dialogues□

can. As far as the interpretation of the obligations under the Information Obligation Act is concerned, I must□

They treat you like any enquirer: the data protection authority does not offer an individual,□

about the instructions for procedural acts in the complaints procedure before the DSB□

additional legal advice. The question of which substantive legal situation in□

"Transitional cases" according to § 69 paragraphs 4 and 5 DSG from the administrative courts□

is to be applied is also contentious and has not yet been the subject of at least one□

decided (revision) procedure at the VwGH.□

Sincerely,□

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Michael SUDA□

Data Protection Authority (Attention, new address from March 15th, 2019!)□

Barichgasse 40-42□

A-1030 Vienna□

Landline: +43 1 52152 2554□

Mobile: +43 676 89891 2554"□

[Quotation not reproduced here]□

5. Evidence: These statements are based on the content of the quoted, with the□

Inbox (application for information) related e-mail exchange.□

6. The applicant then sent an email on March 24, 2019 with the following content□

the address of the data protection authority (dsb@dsb.gv.at):□

"Ladies and gentlemen,□

I acknowledge that the data protection authority has read my communication of 03/18/2019□

qualified as a request for information within the meaning of the Federal Information Obligation Act.□

With regard to this legal opinion of the DSB, I hereby submit the□

application□

on the issuance of a decision in accordance with Section 4 of the Duty to Provide Information Act.□

Sincerely□

Mag. Eduard A\*\*\*\*□

7. Evidence assessment: as last.□

B. In legal terms it follows□

B1 Normative content of Section 1 of the Duty to Provide Information Act□

8. Aim and purpose of the constitutionally guaranteed in Art. 20 Para. 4 B-VG□

Right of access is to give citizens access to information□

allow, which only the public administration has, especially when the□

Access to the information sought for the exercise of the right to free□

expression of opinion, especially the freedom to receive and impart□

Messages or ideas that is instrumental. The limitations of the obligation to provide information are□

to be interpreted narrowly if a request for information as a relevant preparatory step□

for journalistic or other activities involving a forum for a public□

Debate is to be seen, the information sought in the debate□

are in the public interest and the information seeker has a role as a "watchdog" in□

In the sense of the case law of the ECtHR (cf. the considerations of the VwGH in□

E of 05/29/2018, Ra 2017/03/0083).□

9. Conversely, within the framework of the obligation to provide information, it is not the task of an authority□

Obtain or relevant information that they do not have themselves□

academically trained specialists, such as lawyers, trainee lawyers□

or other practicing lawyers, for professional and private purposes□

to carry out judicial research, for example, and then to the inquirers□

share result.□

10. Information within the meaning of the information obligation laws of the federal and state governments always have□

Declarations of knowledge on the subject, the content of which is exclusively such□

is information that is already known to the administration at the time of the request□

and not only by the requested administrative entity for the purpose of fulfilling the□

obligation to provide information must be obtained. Providing information means passing it on□

of information about the content of a file, which as a rule does not indicate that level of detail□

will have information that could be gained by inspecting the files. the□

Use of the term "information" means that the administration is not about to□

extensive elaborations, for the preparation of expert opinions or for the procurement of□

other accessible information is also behaved. In this respect, the law is□

Subordination of the provision of information to the other tasks of the administration□

derivable, from which it follows that requests for information are specific, in the intended□

answerable within a short period of time without impairing the other administrative processes□

Questions must contain (VwGH, E 27.11.2018, Ra 2017/02/0141, RS 2 with reference□

on ErläutRV 41 BlgNR 17. GP, 3; Administrative Court of September 9, 2015, 2013/04/0021; cf□

also VwGH of November 26, 2008, 2007/06/0084; Administrative Court of July 23, 2013,□

2010/05/0230).□

B2 Legal conclusions□

11. The questions asked by the applicant do not fall within the official enforcement area□

the data protection authority. The authority is only involved in relevant legal issues□

As part of their procedural role as an official party in administrative court proceedings□

confronted. In this respect, the data protection authority and the applicant who□

both parties to an appeal proceeding regarding a finding of□

Federal Administrative Court are here for access to the requested information□

same level compared. □

12. The applicant's first question could not be answered as it was already on the ground □

the formulation of the question ("What is the legal situation?") by an application for creation □

of a legal opinion, on its fulfillment according to § 1 para. 1 □

Duty to Provide Information Act 1987 there is no entitlement. □

13. Common to both of the applicant's questions is the question of possible □

jurisprudence. The applicant was already informed about the second question in the □

Answer from Mag. Suda from his own knowledge that the □

corresponding question not decided and at least one relevant procedure □

is pending at the Administrative Court. □

14. Whether there is any other relevant case law, such as that of □

Federal Administrative Court, the data protection authority can based on the state of the files □

and the knowledge available at the authority cannot state with certainty. Because of his □

However, the applicant would need to be able to provide this desired training □

Information itself from other sources, for example by researching exactly for such □

Purposes set up public legal information system of the federal government (RIS), in which □

according to § 20 BVwGG all not only procedural decisions of the □

be published by the Federal Administrative Court. □

15. The request for information was therefore to be dismissed in accordance with the ruling. □