

GZ: DSB-D123.589/0002-DSB/2019 from April 9th, 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 Emilia A***□

(Appellant) of October 8, 2018 against N*** Bauprojekt GmbH□

(Respondent) for violation of the right to secrecy as follows:□

- The appeal is dismissed.□

Legal bases: §§ 1 paragraphs 1 and 2, 24 paragraphs 1 and 5 of the Data Protection Act (DSG),□

Federal Law Gazette I No. 165/1999 as amended; Art. 4 Z 1 and Art. 6 Para. 1 lit. b of the Regulation (EU)□

2016/679 (General Data Protection Regulation – GDPR), OJ No. L 119 of 05/04/2016, page 1.□

REASON□

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

1. With a procedural submission dated October 8, 2018, the□

complainant a violation of the right to secrecy according to § 1 DSG and□

summarized that the Respondent was a property developer□

which she and her husband had concluded a work contract. Now she has□

took over a house with numerous defects. The Respondent directs all□

their "SUB companies" forwarded the telephone number of the respondent to make appointments□

agree and to talk about deficiencies and how to rectify them. There is one□

upright contractual relationship with the Respondent. This have as□

General contractor to arrange the appointments and also the defects in their□

to communicate with subcontractors. The Respondent has no "release" which

telephone or e-mail address of the complainant. are meanwhile

the name and telephone number of the complainant in list form to all

supplier companies have been passed on.

2. With a statement dated October 22, 2018, the Respondent led to

Submissions summarized in the complaint that it was in 2016

Contract for the construction of a residential building with the complainant

been completed. In the course of the handover, warranty claims of

complainant has been asserted. The executing companies have been informed

to make an appointment with the complainant to rectify the defect

arrange. Since these warranty claims arise directly from the contract

the contact transfer to the companies part of the contract.

3. With a supplementary statement of January 24, 2019, the

Respondent the work contract that is the subject of the proceedings.

4. Of the possibility within the framework of the hearing of parties according to § 45 para. 3 AVG

The complainant made no use of submitting a statement and

did not comment further in the proceedings.

B. Subject of Complaint

The subject of the complaint is the question of whether the Respondent

Complainant thereby violated her right to secrecy by

In the course of the rectification of defects from the work contract, the name, e-mail address and

telephone number of the complainant to executing companies.

C. Findings of Facts

On August 3, 2016, the complainant concluded a work contract with

Respondent on the construction of a house on a specified

property. It was agreed that the Respondent would

Services from the planning to the construction of the house. Under

"1.3. Contract bases" it was also agreed that the Respondent, the

services assigned to it - without prejudice to the responsibility towards the

Complainant - partially or fully carried out by other companies

can let.

In the work contract under "7. Warranty" agreed the following: "The

The warranty period is 3 years from handover. The AG [client] declares

expressly, the AN [contractor] or one commissioned by him

companies or experts for the purpose of inspection and rectification of defects

grant access to the house. Significant defects that the AN in the context of

is responsible for the warranty will be remedied within a reasonable period of time (...).".

The complainant made as part of the warranty from the work contract

claimed numerous deficiencies in the Respondent.

The Respondent used her from the contract for the execution

Some of the services transferred from other companies (hereinafter: executing

Company). The Respondent sent the executing company

the name, e-mail address and telephone number of the complainant. the

The complainant's email address is "emilia.a***@***mail.org".

Named executing companies have the complainant

at least in the period September 25th and 28th, 2019 and October 4th and 5th, 2018

contacted regarding the rectification of defects.

Evidence assessment: The findings regarding the work contract and the

associated rectification of defects and communication with the executing companies

of the complainant result from the identical arguments of the

parties in their letters to the data protection authority and the enclosed

work contract.

D. In legal terms it follows that:□

According to § 1 DSG everyone has, in particular with regard to the respect of his□

Private and family life, right to secrecy of those concerning him□

personal data, insofar as there is a legitimate interest in it. A□

such an interest is to be denied if data as a result of their general□

availability or due to their lack of traceability to the person concerned□

secrecy claim are not accessible. As far as the use of□

personal data is not in the vital interest of the□

Affected or with his consent, are limitations of the claim□

Confidentiality according to paragraph 2 leg. cit. in addition, only to protect overriding□

legitimate interests of another.□

At the name, the e-mail address, the first and last name of the data subject□

contains and the telephone number is personal data□

Art. 4 Z 1 GDPR.□

The secrecy of this personal data exists□

subject matter of the proceedings, in principle, an interest worthy of protection, since neither□

asserted later in the proceedings that this data is generally available□

are. According to § 1 para. 2 DSG, however, overriding legitimate interests of a□

provide others with the restriction of the right to secrecy:□

The processing of personal data in accordance with Article 6 Paragraph 1 Letter b is the first case□

DSGVO lawful, among other things, if the processing is necessary for the fulfillment of a contract,□

whose contracting party is the data subject is required.□

For the fulfillment of the contract, the provision does not distinguish between main and□

Ancillary obligations, but requires that the person concerned as a contracting party to the□

establishment of a legal relationship is involved. As a legal basis□

the contract must be effective for the processing and in any case may not□

suffer from legal defects that lead to its nullity. For the fulfillment of one□

Processing is only necessary if it is necessary for the fulfillment of the contract□

specific contractual purposes is necessary and not just useful. That's about the case with□

the communication of credit card details to process the payment of an online purchase, the□

Address of the customer for the contractual correspondence or delivery or the□

Indication of the bank details for the salary transfer (cf. Ehmann/Selmayr [ed.],□

General Data Protection Regulation [Vienna 2017], Art. 6, para. 13).□

Insofar as the person responsible is not involved in the contract himself, the□

Contractual partners probably at least involve him in the initiation or implementation of the contract□

switched on ("function transfer"), so that Art. 6 Para. 1 lit. b DSGVO the□

processing can justify. A weighing of interests is required for paragraph 1 lit. b□

leg.cit. not. In general, it should be used for contract implementation and processing□

in particular, it may be necessary to collect contact details of the contractual partner□

record, store, organize and use if necessary (cf. Sydow [ed.],□

European General Data Protection Regulation [2. edition, Vienna 2018], Art. 6, para. 18ff).□

The complainant has a contract with the respondent in this matter□

closed. Among other things, it was agreed that the services of the Respondent□

can and is partially or fully performed by executing companies□

this also happened in the present case. With that, the executing companies□

involved in the execution of the contract. Part of the fulfillment of the contract also includes the□

Correction of defects under warranty. The disclosure of the contact details of□

Complainant by the Respondent in the context of the fulfillment of the□

the work contract that is the subject of the proceedings was thus in accordance with what was said above□

undoubtedly necessary.□

Against this background, there is a permissible limitation of the claim□

confidentiality of the complainant's personal data, which is why□

the complaint proves to be unjustified and is to be rejected in accordance with Section 24 (5) DSG□

was.□