

GZ: 2020-0.191.373 from March 27, 2020 (case number: DSB-D124.1062)□

[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.]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint by Günther A***□

(Appellant) of July 7, 2019 against the municipality of N*** (Respondent) because of□

Violation of the right to erasure as follows:□

- The appeal is dismissed.□

Legal basis: §§ 35, 47, 53 Lower Austrian Municipal Code 1973 (NÖ GO□

1973), LGBl. 1000-0 as amended; Article 6(1)(e), Article 17 and Article 77 of the Regulation (EU)□

2016/679 (General Data Protection Regulation – GDPR), OJ No. L 119 p. 1.; § 24 of□

Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended;□

REASON□

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

The complainant essentially alleged in his complaint of 7 July 2019 that□

the Respondent violated his right to deletion by data□

have published about his person in a real estate matter, which u.a. on□

www.mip**u.com are accessible. The complainant had the respondent with him□

June 22, 2019 requested deletion and I did so by letter dated June 24, 2019□

a deletion with reference to § 53 Lower Austrian Municipal Code□

declined. Attached to the complaint was the negative reply of the□

Respondent.□

The Respondent brought in his statement of November 4, 2019□

summarized, that the subject of the complaint is a deletion or□

Blacking out of the minutes of a public municipal council meeting, whereby the□

Minutes of the meeting on June 27, 2012 had been approved by the municipal council. the□

Publication of approved minutes of public council meetings□

on the Internet is permissible according to Section 53 (6) of the Lower Austrian Municipal Code. An afterthought□

Deletion or redacting of the minutes of the meeting would of those previously held in public□

to object to the council meeting. The Respondent published public□

Minutes of meetings only on the municipality's own website www.gemeinde-n***.at,□

but not on www.mip**u.com. Attached to the opinion was the□

Complaint passage of the minutes of the meeting with the following wording:□

i.e. Application from Mr. A*** Günther *040 ***weg *5 to purchase a part of parcel no. 6*1/7□

KG ***weg:□

Facts: In a letter dated January 21, 2012, Mr. A*** Günther *040 ***weg *5 requests the purchase of a□

Part of plot no. 6*1/7 KG ***weg (green area south of the property *040 ***weg 7*).□

Decision of the municipal board:□

Application: The mayor submits the application that the municipal board may decide to apply for□

Mr. A*** not to be granted, because due to the zoning a development is not possible and□

In addition, the sale of an ancillary facility also serves as an example for future purchase requests□

would have. The only exception to this would be the possibility of selling the ones he already has□

used area.□

Resolution: The application is accepted.□

Voting: unanimous□

Motion: The mayor makes the motion that the municipal council decide on the request from Mr□

A*** not to be granted, since development is not possible due to the zoning and□

In addition, the sale of an ancillary facility also serves as an example for future purchase requests□

would have. The only exception to this would be the possibility of selling the ones he already has
used area.

Resolution: The application is accepted.

Voting: unanimous

In addition to the complainant's purchase application, the minutes of the meeting can be found
the public municipal council meeting to deal with further purchase applications for

different plots of land, including prospective buyers who are also mentioned by name.

The complainant brought in the granted hearing of the parties with a statement of

February 26, 2020 that it was incomprehensible that his personal data

real estate or real estate matters would be published on the global Internet,

rather, any interest can only exist within a local situation,

the municipal code is historic and not from the General Data Protection Regulation 2016

(probably meant 2018), which is why the relevant provisions of the

Lower Austrian Municipal Code should be repealed. The Respondent has

the disputed negotiation document on the meeting of the municipal council of

March 29, 2012 removed from the Internet, as well as data copies on www.mip**u.com

or elsewhere. For the rest, the complainant maintains his complaint in its entirety

upright.

B. Subject of Complaint

The object of the complaint is the question of whether the respondent, by rejecting the

Request for deletion of the complainant's personal data from the

Minutes of the municipal council meeting of March 29, 2012 against its right to erasure

has violated. If so, whether the Respondent requested the deletion of the published

data from third parties, in particular www.mip**u.com.

C. Findings of Facts

The facts presented under point A. (procedure) will be decided

based on. In addition, the data protection authority has access to the land register under KG

0*035, Gstk-Nr: 6*1/7 and found that Gstk-Nr. 6*1/7, inside EZ *09,

remains the property of the market town of N***.

Evidence assessment: The findings are based on the input contained in the file and

Statements, as well as the inspection of the land register regarding GStk.-Nr. 6*1/7.

D. In legal terms it follows that:

In the present case, the complainant requested according to Art. 17 Para. 1 DSGVO

the deletion of the proceedings of the public municipal council meeting of March 29

2012, or at least the deletion of his personal data from the

Minutes of the meeting, as well as the initiation of other persons responsible for the deletion of

to initiate data copies.

The background to the vote at the public municipal council meeting was a written one

The complainant's purchase application dated January 21, 2012 regarding one owned by the

Market community N *** sub-plot to Gstk-Nr.: 6*1/7, inside EZ *09, KG

0*035. The municipal council decided on March 29, 2012 that the purchase application was lacking

Development option rejected in accordance with the zoning plan and the prejudice effect

been.

First of all, it should be noted that § 35 of the Lower Austrian Municipal Code dem

Municipal council certain matters of the municipality's own sphere of activity

reserved for independent execution. Mentioned by name in § 35 number 22 lit

Lower Austrian Municipal Code, acquisition, sale or other

encumbrance of immovable property.

It follows that for the decision on the purchase application of the complainant

to Gstk-Nr.: 6*1/7, inside EZ *09, KG 0*035 at least the local council factual

was responsible, so that it is a – the respondent as data protection

those responsible - a task delegated by law. An exclusion of the public

according to § 47 Lower Austrian Municipal Code was not given and was also

not relevant.

In a further step, it must be checked whether the processing of the publication on the Internet

is necessary for the performance of a task that is in the public interest, or

in other words, whether the lawfulness of the processing within the meaning of Article 6 (1) e

DSGVO is present and at the same time an exception for the application of the

Deletion provisions of Art. 17 Para. 1 GDPR (cf. Art. 17 Para. 3 lit. b GDPR) fulfilled

is.

Section 53 (6) of the Lower Austrian Municipal Code contains an authorization

approved minutes of public municipal council meetings on the Internet

publish.

The wording of § 53 Para. 6 NÖ GO (emphasis added by the data protection authority)

as follows:

(6) Inspection of the approved meeting minutes of public municipal council meetings as well as the

Anyone is allowed to make copies during the opening hours of the municipal office. To

Subject to the existing technical possibilities, copies must also be made at the expense of the requester

prepared or the minutes of the meeting in any other technically possible way at the expense of the requester

to provide. The approved meeting minutes of public municipal council meetings may

be published online.

The principle of the publicity of municipal council meetings is already in Art. 117 Para. 4 B-

VG and in § 47 paragraph 1 of the NÖ GO. It follows from both provisions that

the exclusion of the public from the treatment of a subject in a session

of the municipal council should be the exception.

§ 47 para. 1 NÖ GO names as a dedicated exception to the principle of publicity

only "objects that require the issuance of individual sovereign administrative acts

have content".

There is no such administrative act here. The refusal of a purchase application from

public land does not constitute an "administrative act".

Otherwise, an exclusion of the public according to § 47 para. 2 NÖ GO at the request of the

chairperson or three members of the municipal council by municipal council resolution

respectively. Likewise, the mayor according to § 47 paragraph 3 NÖ GO already at the

Fixing the agenda of certain items in a closed session

refer.

It would be conceivable that an exclusion of the public from the "optional provisions" of the

§ 47 paragraph 2 or paragraph 3 NÖ GO. The municipal council or the mayor could

As part of a case-by-case review, for example, an exclusion of the public

for data protection reasons. It should be noted, however, that

property decisions within the own sphere of influence of communities like her

§ 35 of the NÖ GO assigns the municipal council to pass a resolution, according to experience

are not insignificant public interest, so that in particular when selling the

immovable property of a municipality, where the transparency of decisions

the public sector seems particularly important, the public interest in the

resolutions of the municipal council appears pronounced. On the other hand, there is interest

of the complainant, who wrote to the municipality with a purchase application

contacted because he wanted to acquire a sub-plot from the municipality that his data

not become public. The need for protection in the secrecy of the data of the

complainant (surname, first name and interest in a particular plot).

however, against the background of his written purchase application already in the

Background, than with an affirmative resolution of the municipal council and a

The realization of the sale/acquisition of a part of the property in any case

Publication of the complainant's data through entry in the land register

would have happened.

The data protection authority therefore sees in the publication of the minutes of the meeting □

Municipal council resolution of the public municipal council meeting of March 29, 2012 □

"Performing a task in the public interest", thereby declaring the legality of the □

Processing within the meaning of Art. 6 Para. 1 lit. e is given and at the same time the exception □

of Art. 17 Para. 3 lit. b GDPR is fulfilled. □

Since the respondent has no obligation to delete the minutes of the meeting □

City council meeting of March 29, 2012 in accordance with Art. 17 Para. 1 DSGVO also lies □

no breach of duty within the meaning of Art. 17 Para. 2 DSGVO, responsible persons (in this case □

in particular to inform the operator of www.mip**u.com), so that this too □

request was to be dismissed in accordance with the verdict. □

It was therefore to be decided overall in accordance with the verdict. □