

GZ: DSB-D216.713/0006-DSB/2018 from 13.9.2018□

[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 of the Alpen-Chalet□

A\*\*\* Ges.m.b.H. (Appellant), represented by B\*\*\* & C\*\*\* Rechtsanwälte, dated□

April 10, 2018 against Pension N\*\*\* Ges.m.b.H. & Co KG (respondent).□

by D\*\*\* and E\*\*\* Rechtsanwälte OG, due to a violation of the right to□

Confidentiality through the operation of an image processing system as follows:□

~ The appeal is dismissed.□

Legal basis: Sections 1, 24 and 69 of the Data Protection Act – DSG, Federal Law Gazette I□

No. 165/1999 as amended; Art. 4 Z 2 of the General Data Protection Regulation – GDPR, OJ No. L 119□

from May 4th, 2016, p. 1.□

REASON□

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

1. With a procedural submission dated April 10, 2018, the complainant brought□

that the Respondent operates in the area of in the joint ownership of several parties□

standing handling and storage hall on GST \*\*43/1 and on GST \*\*51/2,□

which is the sole property of the complainant, a video surveillance without□

Approval and Consent. It will be with several video cameras□

Entrance area to the "Chalet-Dependance" monitored. Since guests of the complainant□

would arrive there by taxi and the like and the area not that□

exclusive use of the Respondent is reserved, is the□

Video surveillance not allowed. Whether a notification to the data processing register□

had occurred was not known to the complainant.□

2. With completion of April 13, 2018, GZ: DSB-D216.713/0001-DSB/2018, demanded the□

data protection authority to comment on the allegations.□

3. With a submission dated April 26, 2018, the Respondent commented and stated that□

that the camera objects mentioned by the complainant are in an underground□

tunnel system were installed. The Respondent disposes within this tunnel□

about parking areas, while the complainant only has a right of access to her□

have garage. It is correct that during the construction of the tunnel the□

Video surveillance system had been installed - at that time with the consent of the□

then owner Ms. Ulrike H\*\*\*, who was the legal predecessor of the□

complainant. The cameras have not been changed since then.□

Camera 1 monitors the entrance to the garage, camera 2 the parking spaces□

Respondent, camera 3 the emergency exit, camera 4 the entrance from the□

Parking spaces for the Respondent's pension. So the cameras wouldn't□

capture the complainant's garage and are with the consent of the former□

owner attached. According to the legal situation at the time, there were no□

Permissions were required and the Respondent relied on the□

leave admissibility. In general, the real problem is that the□

Appellant illegal taxi access contrary to the operating regulations of the tunnel□

and also use the Respondent's parking spaces. This would□

considerable disadvantages for the Respondent.□

4. The data protection authority cleared the complainant on May 3rd□

2018, GZ: DSB-D2136.713/0002-DSB/2018, right to be heard.□

5. In a submission dated May 16, 2018, the complainant stated that it was correct□

may that the owner of the video surveillance system at the time agreed□

but last winter (2016/17) cameras 2 and 3 were renewed without□

to involve the complainant. In any case, she is not a co-owner of the□

physical video system. Also, based on the approval given at the time,□

be concluded that the complainant now agrees and also not that□

the monitoring is right. Also monitor the camera 3 the only□

substantial access to the complainant's hotel premises.□

6. With completion of May 28, 2018, GZ: DSB-D216.713/0003-DSB/2018, shared the□

Data Protection Authority with the fact that as of May 25, 2018 the General Data Protection Regulation in□

had come into force and that the complainant specified deficiencies that only□

due to the entry into force of § 24 DSG without a transitional period□

be, may fix. At the same GZ, official determination of the□

Facts, the Respondent asked to announce whether the recordings□

are stored and how the camera systems are identified.□

7. With a submission dated May 31, 2018, the complainant sent a letter□

which apparently in the correspondence between the legal representatives of the now□

parties to the proceedings before the complaint was lodged. In it will□

stated that the video surveillance was also in the interests of the complainant that□

the video surveillance had existed since 1997/98 and with the um□

specification of a situation is requested. Also attached was the necessary□

improvement of the defects to be remedied according to § 24. For this purpose it was stated□

that the complainant's fundamental right to data protection was still violated□

and the violation of rights would exist independently of storage. Next be them□

and their guests are exposed to constant monitoring pressure and bring about this□

in any case a violation of the fundamental rights protected by § 16 ABGB. About it□

addition would consist of storing, evaluating and further processing of□

Image material violated fundamental rights by the Respondent and her guests. It

would also result from the administrative penal proceedings of the BH Bludenz to BHBL-II-4\*\*\*-

2013/0\*67-\*5 and a picture submitted there that the Respondent not only

their pitches, but rather the entrance to the complainant's hotel. the

The Respondent refused to dismantle the cameras. Also have the

Respondent does not care whether data is stored and if so, how

Long.

8. The Respondent submitted a statement on June 15, 2018 and stated that

that the recordings on a password-protected PC in a separately locked

Space 72 hours would be stored on a rolling basis that data processing as

former standard application is still justified and information signs

"Caution video surveillance Pension N\*\*\* Ges.m.b.H. & Co KG" had been installed.

B. Subject of Complaint

Based on the arguments of the parties, it follows that the subject of the proceedings is

The question is whether the complainant through the image processing system

Respondent's right to confidentiality of personal data

get hurt.

C. Findings of Facts

Based on the submissions of the parties, the following is stated:

The Respondent, with the consent of the then owner, Ms. Ulrike

H\*\*\*, at the time of construction of the underground access tunnel in 1997/98,

which the complainant also uses as a car parking space in accordance with the law

video surveillance with four cameras will be installed in I\*\*\*berg. Camera 1 monitored

the entrance to the garage, camera 2 the parking spaces of the respondent, camera 3

the emergency exit, camera 4 access from the pitches to the pension

Respondent. An area of access to the complainant and the

Emergency exits are included due to the unity of the room. For the purpose of

Protection of property and the preservation of evidence are the recordings of the cameras

stored for 72 hours. The recordings are saved on a password-protected PC

stored in a separately locked room. The warning signs "Caution

Video surveillance Pension N\*\*\* Ges.m.b.H. & Co KG" were still during the

procedure before the data protection authority. The cameras have existed since the

Construction of the tunnel and a camera has been renewed in winter 2016/17.

Evidence Evidence: Evidence was incorporated through the submissions and

evidence provided by the professional counsel of the parties to the proceedings. the

Conflicting claims result from differing views on the

lawfulness of data processing. It is undisputed that the area covered

Image processing system in the I\*\*\*berg tunnel to monitor the parking spaces

Respondent is used. The recorded evidence about the

The storage period results from the submissions of the Respondent, whose

correctness is not doubted by the data protection authority.

D. In legal terms it follows that:

On the admissibility and timeliness of the complaint:

On May 25, 2018, the GDPR and the DSG came into force. The complaint, first

as a control and ombudsman procedure in accordance with § 30 DSG 2000, was due to the

Transitional provisions to be continued as a complaints procedure in accordance with § 24 DSG (§ 69

Para. 4 DSG).

The complainant is a legal entity based in Austria and is subsumed

the complaint under the basic right to data protection standardized in § 1 DSG, which

was not changed by the DSG.

Although the GDPR itself only protects natural persons,

constitutional interpretation to assume that the standardized in § 1 DSG

Rights also apply to legal persons and they consequently invoke them

be able.

According to Section 24 (4) DSG, the right to have a complaint dealt with expires if

the intervener not within one year after becoming aware of the

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

event alleged to have taken place.

As stated, the video surveillance that is the subject of the proceedings has existed for

1997/98, so for around 20 years. Nevertheless, the right to treatment is

Complaint is not statute-barred, because with a continuous data determination

The limitation period always begins anew (cf. the decision of the

Data Protection Commission of July 24, 2009, GZ K121.512/0012-DSK/2009).

The complaint must therefore be dealt with in substance.

Regarding the content of the complaint:

However, the appeal is found to be inadmissible.

The applicability of the GDPR or the DSG requires that data is actually

processed (Art. 4 Z 2 GDPR).

It is undisputed that the video surveillance that is the subject of the proceedings

natural persons are processed.

However, since the complainant is a legal person,

this by video surveillance impossibly in the right to secrecy according to § 1

DSG are violated because no data of the complainant is processed.

Data of natural persons that may be attributed to the complainant

can (such as servants or (co-)owners), cannot in this context

ipso facto be regarded as the complainant's data, since the

Rights under the GDPR and the DSG are highly personal rights that

are characterized in that their content is determined by the person entitled

becomes, so that through a change in his person, the content of the service itself also changes□

changes (see also the decision of the Federal Administrative Court of□

November 24, 2014, GZ W214 2008246-1, with further references).□

The complainant also does not allege that she committed the alleged violation of rights□

on behalf of and with the power of attorney of any natural persons affected.□

In this respect, § 1 DSG differs fundamentally from § 16 ABGB; latter provision□

can also be used according to the established case law of the Supreme Court□

to take action against possible surveillance pressure from dummy cameras or the like.□

In this case, the OGH also affirms the active right to sue a legal entity□

to defend oneself against an (inadmissible) monitoring pressure (cf. the□

Resolution of March 29, 2017, GZ 6 Ob 231/16p, with further references).□

But since - as explained above - the applicability of data protection law□

Provisions an actual data processing - and not just a possible one□

Surveillance pressure - requires this case law of the OGH to § 16 ABGB□

not transferable to § 1 DSG.□

The appeal was therefore dismissed accordingly.□