

GZ: DSB-D124.098/0002-DSB/2019 from 22.2.2019□

[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 Emil A****'s data protection complaint□

(complainant) of January 25, 2019 against N*** Electronic GmbH□

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

1. The complaint is granted and it is established that□

the Respondent gives the complainant the right to information□

violated by not responding to his request for information of December 10, 2018□

reacts and also until the conclusion of the procedure before the data protection authority□

did not provide any subsequent information.□

2. The Respondent is ordered, within a period of□

one w eek, otherwise execution at the request of the complainant□

to comply with information or to comply with these about non-action□

Art. 12 Para. 4 GDPR.□

Legal basis: Art. 12, Art. 15, Art. 57 (1) lit. f, Art. 58 (2) lit. c, Art. 77 (1).□

of Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR), OJ No. L 119□

from May 4th, 2016, p. 1; Section 24 (1) and (5) of the Data Protection Act (DSG), Federal Law Gazette I□

No. 165/1999 as amended.□

REASON□

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

1. With a submission dated January 25, 2019 (received on January 28, 2019), the

Complainant a violation of the right to information and summed up

submits that the Respondent, in response to his request for information dated December 10, 2018,

which was delivered on December 11, 2018, did not respond. A corresponding

Proof of delivery is enclosed with the file.

2. With a statement dated February 13, 2019, the Respondent brought

In summary, the complainant submits his request for information to her

branch in Klagenfurt or the employee present there.

However, the data protection provisions point out at the outset that

that a request for information should be sent in writing to the data protection officer "Ing. Richard

B**, J**gasse *4, 4*3* P**berg, b**@n**.at". the

However, the data protection officer has no corresponding request for information

receive. The Respondent was prepared to comply with the request for information,

the complainant may submit his request due to the absence due to vacation

to walter.c**@n**.at [editor's note: last word added, sentence in

Original incomplete due to an editorial error].

B. Subject of Complaint

Based on the submissions of the appellant, it follows that

The subject of the complaint is whether the respondent is the complainant

thereby violated the right to information by responding to his request for information dated

December 10, 2018 did not respond.

C. Findings of Facts

On December 10, 2018, the complainant received a data protection notice by post

Request for information to a branch located in Klagenfurt

Respondent submitted. This request for information became the Respondent

delivered on December 11, 2018. Since the Respondent on that

does not respond to requests for information within a period of one month from delivery□

has, the complainant has a relevant complaint to the□

introduced data protection authority. The Respondent has until the end of the□

proceedings before the data protection authority did not respond to this request for information.□

Evidence assessment: The findings made are based on the input of the□

Complainant dated January 25, 2019. The Respondent has within the scope of her□

Statement of February 13, 2019 confirms that the request for information from□

December 10, 2018 was delivered to your branch in Klagenfurt.□

D. In legal terms it follows that:□

A request for information is a one-sided request that requires receipt□

declaration of intent. In order to have legal effects, the request must□

have reached the responsible person addressed (cf. for the legal situation□

the DSG 2000 the decision of the Data Protection Commission of July 24, 2009,□

GZ K121.504/0008-DSK/2009 mwN).□

According to Art. 12 Para. 3 GDPR, the person responsible then has within the standard period of□

one month from receipt of a request for information to the□

Applicant to grant or this pursuant to Art. 12 para. 4 leg. cit. about the relevant□

Teach reasons for not taking action.□

The European□

Regulators, however, open, which is why on the national legislature□

must be resorted to. According to the general civil law reception theory is□

judging when a statement comes into the recipient's sphere of influence□

(cf. § 862a ABGB). According to this reception theory, a declaration is considered to be the addressee□

received if they were placed in such a situation that the□

acknowledgment by the addressee can be expected under normal circumstances□

and any disturbances are only possible in the area of the addressee (cf. Illibauer in□

Knyrim [editor], DatKomm Art. 12 GDPR margin no. 85).□

In the present case, the request for information was undisputedly sent to a in Klagenfurt□

located branch of the Respondent transmitted, whereby the□

request for information has undoubtedly reached their sphere of influence. There aren't any□

Evidence suggesting the opposite (e.g.,□

Request for information, which was obviously sent to a "Noreply" address).□

The standard period of one month is therefore calculated from December 11, 2018.□

In addition, it should be noted that the person responsible pursuant to Art. 12 para. 2□

GDPR must take appropriate measures to ensure that the rights of those affected can be exercised□

is facilitated (see also recitals 59 and 63 GDPR).□

If the Respondent submits that according to their□

Data protection regulations the right to information or the request for information□

in writing to the data protection officer "Ing. Richard B***, J***gasse *4, 4*3*□

P***berg, b***@n***.at" is to be addressed to her in Art. 12 Para. 2 GDPR□

to counter the enshrined facilitation requirement:□

A data subject cannot within the framework of data protection regulations or general terms and conditions□

are stopped, an application for the exercise of data subject rights - with other□

Invalid – delivered to a specific address or in a specific manner□

have to. The person concerned only has to ensure that the application□

demonstrably entered the sphere of influence of the person responsible. The person in charge has□

therefore in accordance with Art. 12 Para. 1 and Para. 2 DSGVO to take appropriate measures that□

data protection requests to the appropriate internal office for further processing□

Processing can be forwarded so that the standard period according to Art. 3 leg. cit. complied with□

can be.□

A period of one week is appropriate in view of the time that has already elapsed,□

so that the Respondent can provide the relevant information or□

Complainant about the reasons for not taking action pursuant to paragraph 4 leg. cit.□

can teach.□